

Michael Schofield

June 1, 2012

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA  STATE OF TEXAS, ) Plaintiff, ) VS. ) ERIC H. HOLDER, JR., IN ) HIS OFFICIAL CAPACITY AS ) ATTORNEY GENERAL OF THE ) UNITED STATES, ) Defendant, ) ERIC KENNIE, ET AL., ) Defendant-Intervenors, ) THE TEXAS STATE CONFERENCE ) OF NAACP BRANCHES, ET ) AL., ) Defendant-Intervenors, ) TEXAS LEAGUE OF YOUNG ) VOTERS EDUCATION FUND, ET ) AL., ) Defendant-Intervenors, ) TEXAS LEGISLATIVE BLACK ) CAUCUS, ET AL., ) Defendant-Intervenors, ) VICTORIA RODRIGUEZ, ET ) AL., ) Defendant-Intervenors. )	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
***** 1 ORAL DEPOSITION OF 2 MICHAEL SCHOFIELD 3 JUNE 1, 2012 ***** 6 ORAL DEPOSITION OF MICHAEL SCHOFIELD, produced as a 7 witness at the instance of the Defendants Eric H. Holder, 8 et al., and duly sworn, was taken in the above-styled and 9 numbered cause on Friday, June 1, 2012, from 9:39 a.m. to 10 4:48 p.m., before Tamara K. Chapman, CSR in and for the 11 State of Texas, reported by machine shorthand, at the 12 Office of the Attorney General, 816 Congress, Suite 1000, 13 Austin, Texas, pursuant to the Federal Rules of Civil 14 Procedure and the provisions stated on the record or 15 attached hereto. 16 17 18 19 20 21 22 23 24 25	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25



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1	*****	5	1	MICHAEL SCHOFIELD,
2	EXAMINATION INDEX	2	2	having been first duly sworn, testified as follows:
3		3	3	EXAMINATION
4		4	4	BY MR. GEAR:
5	EXAMINATION BY MR. GEAR..... 7	5	5	Q. Good morning, Mr. Schofield.
6	EXAMINATION BY MR. DUNN..... 225	6	6	A. Good morning.
7		7	7	Q. This is the -- this is your deposition today and
8		8	8	this is the matter of Texas v. Holder, USDC, for DC Docket
9		9	9	Number 1:11 CV 128.
10	*****	10	10	Could you spell your -- state your name and spell
11	INDEX OF EXHIBITS	11	11	it for the record, please?
12		12	12	A. My name is Michael Schofield, S-C-H-O-F-I-E-L-D.
13	Exhibit 5..... 164	13	13	Q. And my name is Bruce Gear. I'm with the
14	SB 14, HB 218, relating to requiring	14	14	Department of Justice. I represent Eric Holder in this
15	a voter to present proof of	15	15	case, the United States Attorney General. And if I could
16	identification	16	16	just ask everyone else to introduce yourself for the
17	(No Bates - 18 pages)	17	17	record.
18	Exhibit 28..... 61	18	18	MR. MCKENZIE: Sure. John McKenzie, for the
19	HB 218, relating to requiring a voter	19	19	State of Texas and for the witness.
20	to present proof of identification	20	20	MR. BRISSENDEN: Reynolds Brissenden, for
21	(No Bates - 13 pages)	21	21	the State of Texas and the witness.
22	Exhibit 44..... 38	22	22	MR. GORDON: Justin Gordon for the State of
23	HB No. 1706, relating to requiring a	23	23	Texas and the witness.
24	voter to present proof of identification	24	24	MR. DUNN: Chad Dunn, for the Defendant
25	(No Bates - 10 pages)	25	25	Kennie intervenors.
1	Exhibit 101..... 39	6	1	MR. FISHER: Spencer Fisher, for the
2	History of HB 1706	2	2	Attorney General.
3	(No Bates - 3 pages)	3	3	Q. (BY MR. GEAR) Now, you understand that you have
4	Exhibit 102..... 58	4	4	been sworn in and that you're under oath -- and you're
5	History of HB 218	5	5	under oath under penalty of perjury and that this is
6	(No Bates - 4 pages)	6	6	basically like trial testimony. Do you understand that?
7	Exhibit 106..... 87	7	7	A. Yes.
8	History of SB 362	8	8	Q. Okay. That during your deposition, you're
9	(No Bates - 3 pages)	9	9	expected to testify completely, fully and truthfully. Do
10		10	10	you also understand that?
11		11	11	A. Yes.
12		12	12	Q. Okay. Now, just a couple of ground rules for the
13	Exhibit 223..... 123	13	13	deposition. I'm going to be asking you some questions,
14	History of SB 14	14	14	and you'll be providing the answers. Just for the court
15	(No Bates - 9 pages)	15	15	reporter's purposes, I need to be able to complete my
16	Exhibit 310..... 21	16	16	question to you, and then I will give you a complete
17	Amended Notice of Deposition	17	17	opportunity to finish your answer to me. The reason we're
18	(No Bates - 7 pages)	18	18	doing that is because the court reporter can't record both
19	Exhibit 311..... 211	19	19	communications at the same time. So when you answer, I
20	2/25/2009 e-mail from John Sepheri to	20	20	need a verbal answer. Shaking your head "yes" or "no"
21	Michael Schofield	21	21	cannot be recorded by the court reporter. Do you
22	(Bates TX_00040055 - TX_00024520)	22	22	understand that?
23		23	23	A. Yes.
24	Exhibit 314..... 88	24	24	Q. Okay. So, also, if I ask you a question that you
25	SB 362, HB 218, relating to requiring	25	25	do not understand, you know, you can always stop me or ask

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21 1 A. Okay. 2 Q. Thank you. 3 (Exhibit 310 was marked.) 4 Q. (BY MR. GEAR) I'm showing you what's been marked 5 as Exhibit No. 310. I'll give you a chance to look at 6 that. 7 (Witness reviews document.) 8 Q. (BY MR. GEAR) Have you had a chance to look at 9 the exhibit marked as Exhibit 310? 10 A. I haven't got to the subpoena duces tecum yet. 11 Has this changed from the first -- this is the amended 12 notice of deposition. Has it changed from the original 13 notice of deposition? 14 Q. No. Other than the date and time. 15 A. Okay. 16 Q. So we were discussing Exhibit 310. Have you 17 reviewed this document before? 18 A. I've not reviewed this document before, because 19 this is the amended notice of deposition. I saw the 20 original notice of deposition. 21 Q. And I turn your attention specifically to Page -- 22 I believe it's Page 5 for you, which is listed as 23 Documents. Do you see that? 24 A. Yes. 25 Q. Do you recall reviewing the request for documents	23 1 you indicated that someone took your place? 2 A. Yes. 3 Q. Okay. When you left the governor's office, did 4 you leave the files that you had previously worked on at 5 the governor's office? 6 A. Yes. 7 Q. All right. And that would include e-mails? 8 A. Yes. 9 Q. Communications and other kinds of document? 10 A. Yes. I did some housecleaning before I left in 11 terms of old paper files from prior sessions and things 12 like that. 13 Q. Did you request -- did you make a request to 14 anyone that is still within the governor's office to 15 search for the documents requested in the notice of 16 deposition? 17 A. I did not. 18 Q. So as you sit here today, you have no knowledge 19 as to whether or not anyone within the governor's office 20 searched for the documents requested in the amended notice 21 of deposition? 22 A. That's correct. 23 MR. GEAR: Can we go off the record for a 24 second. 25 (Off the record.)
22 1 page? 2 A. I did. 3 Q. Okay. And I turn your attention specifically to 4 Paragraph 1 and ask you to take a look at that. Did you 5 review Section 1, and did you search for these documents? 6 A. I did. 7 Q. And when I say "you," I mean did you or anyone 8 else within the governor's office search for these 9 documents? 10 A. And, again, I searched my -- my own documents. I 11 don't -- I can't speak to any documents in the governor's 12 office. 13 Q. So are you aware of whether or not anyone within 14 the governor's office searched for these particular 15 documents? 16 A. I am not aware. 17 Q. And would that be true for each paragraph, 1 18 through 12? 19 A. Yes. I -- I reviewed the entire subpoena duces 20 tecum before looking through my documents and then kept it 21 open while I was looking so that I could refer back to it. 22 Q. And you said you're no longer with the governor's 23 office. When did you leave the governor's office? 24 A. In September of 2011. 25 Q. When you left the governor's office, I believe	24 1 MR. GEAR: We can go back on the record. 2 Q. (BY MR. GEAR) Can you tell me who replaced you 3 when you left the governor's office? 4 A. Yes. And I know I'm going to blank on his name. 5 Q. I do that all the time. 6 A. I apologize. I know the man well. I just can't 7 think his name right now. I'll have it soon I'm sure. 8 Oh, Ryan Brannon. 9 THE WITNESS: Sorry, Ryan. That's two today 10 already. 11 A. B-R-A-N-N-O-N. 12 Q. (BY MR. GEAR) All right. While you were in the 13 governor's office, I want to talk about the records that 14 were maintained there. How are records maintained in the 15 governor's office? 16 A. I'm not sure I understand -- 17 Q. How are records maintained in the governor's 18 office? 19 A. I'm sorry, I don't know what you mean by that. 20 Q. How are records maintained? When I ask you the 21 question about records, are you unclear as to what I mean 22 by that? 23 A. No. It's the "maintained" part. I mean, I can 24 tell you what I did. I don't know -- you know, if I 25 created a document on the computer, it stayed on the



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<p>1 A. I do not, no.</p> <p>2 Q. And you mentioned your file cabinet contained</p> <p>3 notes. Do you have any knowledge as to whether or not</p> <p>4 anyone searched the file cabinet for any notes that may be</p> <p>5 responsive to the notice of deposition?</p> <p>6 A. I do not, no.</p> <p>7 Q. Do you have any knowledge as to whether anyone</p> <p>8 within the governor's office may have searched for any</p> <p>9 reports or analysis that may be responsive to the notice</p> <p>10 of deposition?</p> <p>11 A. I do not, no.</p> <p>12 Q. And, again, do you have any knowledge as to</p> <p>13 whether anyone within the governor's office searched for</p> <p>14 any other documents that may be responsive to the notice</p> <p>15 of deposition?</p> <p>16 A. I do not, no.</p> <p>17 Q. Is there a retention policy in the governor's</p> <p>18 office for retaining documents?</p> <p>19 A. There is.</p> <p>20 Q. And can you tell me what that retention policy</p> <p>21 is?</p> <p>22 A. I'm not really familiar with the terms of it.</p> <p>23 Q. What was your practice as an employee in the</p> <p>24 governor's office for maintaining -- retaining documents?</p> <p>25 A. If we created something originally, particularly</p>	29	<p>1 office of maintaining electronic files, other than your</p> <p>2 personal computer or your computer that you had at the</p> <p>3 governor's office?</p> <p>4 A. I don't know, because I didn't deal with that.</p> <p>5 Q. Who did deal with it?</p> <p>6 A. I don't know.</p> <p>7 Q. Did you supervise anyone while you were employed</p> <p>8 with -- at the governor's office?</p> <p>9 A. No.</p> <p>10 Q. Let's talk briefly about your educational</p> <p>11 background. Can you describe your educational background</p> <p>12 for me.</p> <p>13 A. Yes. I have a BA in political science</p> <p>14 from Rutgers College -- Rutgers University, and a JD from</p> <p>15 the Paul M. Hebert Law Center at Louisiana State</p> <p>16 University.</p> <p>17 Q. And do you currently have an active law license?</p> <p>18 A. I do.</p> <p>19 Q. Do you currently practice law?</p> <p>20 A. I do not at the moment.</p> <p>21 Q. And regarding your work history, have you ever</p> <p>22 actually practiced law?</p> <p>23 A. Yes.</p> <p>24 Q. And can you tell me a little bit about that?</p> <p>25 A. Sure. I graduated from law school in 1992, and I</p>	31
<p>1 dealing with an agency or anything that was official, we</p> <p>2 kept a copy of it. Much of what we did in the legislative</p> <p>3 sphere was transient. Notes about -- you know, reminding</p> <p>4 yourself about a hearing tomorrow or things you want to</p> <p>5 try to get in a bill or whatever. And I don't know</p> <p>6 whether I kept copies of that or not.</p> <p>7 Q. So when you said things -- you testified to</p> <p>8 things that are official. What does that mean?</p> <p>9 A. The governor has a number of, you know, official</p> <p>10 responsibilities, and they're kind of numerous. If you</p> <p>11 were doing something with respect to that, I'm sure that,</p> <p>12 you know, he'd keep a copy of that.</p> <p>13 And that would be -- that wouldn't be something</p> <p>14 that I would keep a copy of. That would be something that</p> <p>15 the staff -- the staff of the division director would keep</p> <p>16 a copy of. Things that went and out --</p> <p>17 Q. So when there's --</p> <p>18 A. -- correspondence.</p> <p>19 Q. I'm sorry. When there's a document or a</p> <p>20 communication that is considered official, is there a</p> <p>21 central filing system for that particular document,</p> <p>22 generally?</p> <p>23 A. I assume there is. I don't -- I never had to</p> <p>24 deal with it.</p> <p>25 Q. Is there any other method within the governor's</p>	30	<p>1 practiced in the trial department at Baker Botts from 1992</p> <p>2 to 1998. I was an associate at Howrey &amp; Simon, LLP, from</p> <p>3 1998 to 2000. I practiced in-house at a company called</p> <p>4 Equiva Services, LLC, from 2000 until 2002.</p> <p>5 Q. And what was the last --</p> <p>6 A. Equiva Services, E-Q-U-I-V-A.</p> <p>7 Q. All right. And in any of those capacities</p> <p>8 working in the various law firms, did you deal with any</p> <p>9 issues that pertained to election law in the State of</p> <p>10 Texas?</p> <p>11 A. No.</p> <p>12 Q. Did you review any issues that pertained to voter</p> <p>13 ID in the State of Texas?</p> <p>14 A. No.</p> <p>15 Q. Did you review any issues that pertained to voter</p> <p>16 fraud in the State of Texas?</p> <p>17 A. No.</p> <p>18 Q. In your capacity as an attorney in any of these</p> <p>19 offices, did you either defend or litigate a case that</p> <p>20 dealt with voter fraud in the State of Texas?</p> <p>21 A. No.</p> <p>22 Q. So I understand that you are a -- you were a</p> <p>23 policy analyst in the governor's office, correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. And so when did you first become employed</p>	32



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<p>1 at the governor's office?</p> <p>2 A. I became first employed at the governor's office</p> <p>3 in January of 2003.</p> <p>4 Q. And did you -- and when did you leave the</p> <p>5 governor's office?</p> <p>6 A. I left that job in January -- in September of</p> <p>7 2005.</p> <p>8 Q. And where did you go after that?</p> <p>9 A. I ran for the legislature.</p> <p>10 Q. And did you win?</p> <p>11 A. I did not.</p> <p>12 Q. So ran for the legislative in 2005. What did you</p> <p>13 do after that?</p> <p>14 A. After that, I was reemployed by the governor's</p> <p>15 office, beginning in January of 2007. And that's when I</p> <p>16 became a policy analyst.</p> <p>17 Q. So from January 2003 until September of 2005,</p> <p>18 what title or position did you hold?</p> <p>19 A. Assistant general counsel.</p> <p>20 Q. And can you describe the responsibilities that</p> <p>21 you held as an assistant general counsel?</p> <p>22 A. They were basically two-fold. I had legal</p> <p>23 responsibilities involving everything from signing off on</p> <p>24 settlements of the State, things of that nature, to policy</p> <p>25 responsibilities involving whatever areas the governor</p>	33	<p>1 follow for different questions to ask. What the bill --</p> <p>2 and I can't remember the form anymore. But, you know,</p> <p>3 every bill had the same format. And then make a</p> <p>4 recommendation to the governor as to how the bill, as it</p> <p>5 currently is written comports with the governor's views,</p> <p>6 whether he'd recommend supporting it or not.</p> <p>7 Q. So do I understand that you would make</p> <p>8 recommendations to the governor whether to support the</p> <p>9 bill or not?</p> <p>10 A. Yes. Although it was not directly necessarily to</p> <p>11 the governor. It would sort of go to the next level of</p> <p>12 people, and they would look at it and meet with you and</p> <p>13 figure out why you were for or against and whether it was</p> <p>14 a good idea and where we should be.</p> <p>15 Q. Okay. Let me just back up for a second so I can</p> <p>16 continue to try to understand exactly what you do.</p> <p>17 You said that you would read the bill. How would</p> <p>18 a bill generally come to you and where would it come from?</p> <p>19 A. The governor's office subscribes to a service</p> <p>20 that lets us know when each new bill is filed. Someone in</p> <p>21 the governor's office would look at all the captions and</p> <p>22 assign them to the person who had that subject matter, and</p> <p>23 then you would get an e-mail saying, "These are all the</p> <p>24 new bills that were filed in your area today."</p> <p>25 Q. And do you know what the name of the service is?</p>	35
<p>1 would assign me.</p> <p>2 Q. So between 2003 and 2005 in your capacity as</p> <p>3 general counsel, were you ever asked to handle any issues</p> <p>4 related to voter ID in the State of Texas?</p> <p>5 A. I did the elections bills. I don't recall if</p> <p>6 there were voter ID bills filed in the 2005 session or</p> <p>7 not. I don't believe there were in the 2003 session.</p> <p>8 Q. So when you said you did the elections bills,</p> <p>9 what would that have included? What responsibilities</p> <p>10 would that have included?</p> <p>11 A. I would analyze the bill, follow the pass of the</p> <p>12 bill in the legislature and keep track of what was going</p> <p>13 on.</p> <p>14 Q. So I'm trying to stick with the 2003-2005 time</p> <p>15 period and understand what exactly your responsibilities</p> <p>16 were. So you said you would analyze the bills and follow</p> <p>17 the bills. Can you explain a little bit more what you</p> <p>18 mean by "analyze the bills"? So if, for instance, there</p> <p>19 was a voter ID bill in 2005, what exactly would you do</p> <p>20 when it comes to analyzing a bill?</p> <p>21 A. I would read the bill, write a summary of what it</p> <p>22 did, how it changed the law, what it would -- you know,</p> <p>23 how the law would be different from it is today. And</p> <p>24 there was a format that -- for -- regardless of what the</p> <p>25 subject matter of the bill was, there was a format to</p>	34	<p>1 A. I don't remember, but I think we use the same one</p> <p>2 every session.</p> <p>3 Q. So again I'm generalizing, if a bill related to</p> <p>4 voter ID were to -- and is it an e-mail service? Is it an</p> <p>5 electronic service? A paper service? What exactly is the</p> <p>6 service?</p> <p>7 A. I'm not sure I know the difference between e-mail</p> <p>8 and electronic, but --</p> <p>9 Q. Consider them the same, E-mail, electronic. Did</p> <p>10 it come electronically --</p> <p>11 A. Yes.</p> <p>12 Q. -- or did it come by paper?</p> <p>13 A. Electronically.</p> <p>14 Q. So when you receive a bill, what's the next step</p> <p>15 in the process? What is it that you personally would have</p> <p>16 had to do?</p> <p>17 A. The first thing I had to do is read it.</p> <p>18 Q. Okay. Now, is there a specific process? You</p> <p>19 described reading the bill, writing a summary, formatting</p> <p>20 questions and recommendations and then the recommendation</p> <p>21 for the governor. Is there -- is there a specific process</p> <p>22 that you would follow when you receive a bill beyond this?</p> <p>23 A. I don't understand the question.</p> <p>24 Q. Okay. Let me -- let me -- and I'm just -- this</p> <p>25 is my chance to understand exactly what you know and how</p>	36



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37 <p>1 things occur, and so I'm just formulating these as we go 2 along, but -- 3 So when you read a bill, is there a specific 4 process that you follow in reading a bill? It's a very 5 general question. Is there a -- I mean -- do you 6 understand the question? 7 A. No. 8 Q. Okay. So you receive a bill, correct? 9 A. Right. 10 Q. Electronically? 11 A. (Witness nods head.) 12 Q. You read that bill, correct? 13 A. Right. 14 Q. What is it that you are looking for when you are 15 reading a particular bill? And this is a general 16 question. 17 A. First of all, you're just looking for what is in 18 it, what is it about, what does it do. You know, what do 19 the provisions in the bill do to change the law. 20 Q. Would you compare that bill, for instance, to the 21 existing law, if there is one? 22 A. Yes. At least in the sense of saying what this 23 bill does and -- you wouldn't necessarily do a 24 point-by-point comparison. It depends on the situation. 25 Q. Okay. How -- you said it wouldn't be a</p>	39 <p>1 MR. GEAR: This was previously marked as 2 Exhibit No. 44. 3 Q. (BY MR. GEAR) I've handed you what's been marked 4 as Exhibit No. 44. Take some time and look at that, 5 please 6 (Witness reviews document.) 7 Q. (BY MR. GEAR) And let me know when you've had 8 enough time to review it. 9 A. Okay. 10 Q. You have had an opportunity to review Exhibit 11 No. 44? 12 A. Yes. 13 Q. And can you tell me what that is? 14 A. This looks like a draft of a bill, House Bill 15 No. 1706. And it says -- it doesn't have the footer at 16 the bottom that tells you what session it was or, you 17 know, give any indication of whether this is the as-filed 18 version or a committee substitute or something along those 19 lines. 20 Q. I'm going to also hand you what's been marked as 21 Exhibit 101. 22 (Exhibit 101 was marked.) 23 Q. (BY MR. GEAR) Give you a chance to look at that. 24 (Witness reviews document.) 25 Q. (BY MR. GEAR) And my general question is, does</p>
38 <p>1 point-by-point comparison -- 2 A. It might be, But not necessarily. 3 Q. So let's talk a little more specifically now in 4 2005. If you received a voter ID bill, would you have 5 done a point-by-point comparison? 6 A. I don't remember. 7 Q. But you would have reviewed both the bill that 8 you just received and the existing law? 9 A. Typically. Again, it depends on the bill. 10 Q. Once you read the bill, you described that you 11 write a summary. What exactly does that mean? 12 A. You write a summary summarizing what the 13 provisions of the bill were. You know, what they did, 14 what were the main -- not necessarily every single 15 provision, depending on what the bill was. But, you know, 16 the primary provisions that change the law, what they did. 17 Q. Between reading the bill and writing the summary, 18 does that involve any additional research? 19 A. It could. Depending on the bill. 20 Q. And more specifically, when dealing with -- if a 21 voter ID bill was received in 2005 by you and after you 22 read the bill, do you believe that you would have done any 23 additional research beyond just simply reading the bill? 24 A. Again, I don't recall a bill in 2005. 25 (Exhibit 44 was marked.)</p>	40 <p>1 that help put Exhibit No. 44 into context? 2 A. It does. 3 Q. Okay. And can you tell me what Exhibit No. 44 4 is? 5 A. Well, I don't know what version Exhibit No. 44 -- 6 you know, how far along it was in the process. But it was 7 a bill that ultimately passed the House and then just went 8 nowhere in the Senate. It was referred to the committee 9 and then just died there, in 2005. 10 Q. Okay. And so can you tell me who authored the HB 11 No. 1706? 12 A. Mary Denny who was chairman of elections at the 13 time. 14 Q. Okay. So my understanding is -- is that you were 15 in the governor's office as his legal counsel until 2005, 16 September of 2005? 17 A. That's correct. 18 Q. Would you have been involved in reviewing HB 19 No. 1706? 20 A. I believe I would have. 21 Q. Okay. So we were talking generally about if a 22 bill was received by the service and what you would do, so 23 let's turn our attention now to more specifics about HB 24 No. 1706. Do you recall reviewing this bill in 2005? 25 A. I don't recall reviewing it specifically.</p>



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41 <p>1 Q. Now, when you received this bill -- and do you  2 have any idea of when you would have actually received a  3 draft of this bill?  4 A. When it was filed, probably within two or  5 three days of its filing. I would get an e-mail that  6 would -- listed all the bills that were filed, and you  7 click on that particular bill when you're ready to work on  8 it. And then it would sent you to wherever you get the  9 draft of it.  10 Q. So would you have received HB 1706 in its final  11 form prior to filing, or would you have received a draft  12 that -- would you have received a draft?  13 A. I don't recall receiving a draft. The system  14 would just give you the filed version.  15 Q. I think what I was trying to ask is -- for  16 clarification purposes, where along the process would you  17 actually receive the bill? And just for clarification  18 purposes if you look at Exhibit 101, there are a number of  19 steps in the process that a bill goes through, obviously.  20 Can you tell me generally where you would have received  21 either a draft of the final version of Exhibit No. 44 by  22 referencing Exhibit No. 101?  23 A. Yes. And, again, I'm sorry I don't remember.  24 I'd be happy to tell you if I did. But typically what  25 would happen is, when there's an official version the</p>	43 <p>1 Q. In receiving the official version of the bill, do  2 you recall if you had any communication with  3 Representative Denny?  4 A. I don't -- I didn't work very closely with  5 Representative Denny. She's a very nice lady. I just  6 didn't happen to work very closely with her because I was  7 pretty new.  8 I probably talked with her at committee hearings  9 about it, but I can't recall actually doing that. And  10 probably not about the bill, either, come to think of it.  11 Q. So when you're involved in the drafting of a  12 bill, generally how you would you be involved?  13 A. There weren't very many bills I was involved in  14 the drafting of. And I don't think I ever got involved in  15 the drafting of the photo ID bill that I can recall, other  16 than, you know, talking with members as the bill's  17 proceeding.  18 Q. So we've talked about HB 1706, and that was a  19 2005 bill. You don't recall that you were involved in the  20 drafting of that bill, correct?  21 A. Yeah. I don't.  22 Q. Do you recall that there was a photo ID bill in  23 2007?  24 A. Yes.  25 Q. And were you involved in the drafting of that</p>
42 <p>1 computer tells you about it and you go get it. So when  2 there's a version that's filed or a version that's been  3 reported out of committee or a version that's passed the  4 House or -- been reported to a committee -- out of  5 committee in the other House, when there's some -- if I  6 recall correctly, when there's some official version of  7 it, you would get that -- not necessarily drafts -- in  8 fact, not drafts in between.  9 Q. Okay. And so when you say "official version,"  10 can you define what you mean by that?  11 A. It's -- and again, this is what would come  12 through that system. When the bill is filed, the filed  13 version goes into the system and then you're notified that  14 it's there.  15 Q. And you would receive the filed version?  16 A. You would receive the filed version.  17 Q. Okay. Do you recall if you were involved in the  18 drafting -- any of the drafting stages of HB 1706?  19 A. I don't remember.  20 Q. Would you ever be involved in the drafting of a  21 bill?  22 A. Sometimes.  23 Q. Do you recall if anyone within the governor's  24 office was involved in the drafting of HB 1706?  25 A. I don't.</p>	44 <p>1 bill at all?  2 MR. MCKENZIE: Well, I'm going to object on  3 the basis of deliberative process privilege to the extent  4 that it's not public that the governor participated in the  5 drafting of any bills. If it was public information, then  6 you may answer the question.  7 A. I don't think there's any public information  8 about drafting a bill.  9 Q. (BY MR. GEAR) Okay. Are you refusing to answer  10 my question on the advice of your counsel?  11 A. I'm going to follow the advice of my counsel.  12 Q. But as you sit here today, you don't recall being  13 involved in the drafting of any photo ID bills; is that  14 correct?  15 MR. MCKENZIE: Same objection.  16 Q. (BY MR. GEAR) I believe you've already testified  17 to that, but...  18 And you're refusing to answer my question  19 based on advice of counsel?  20 A. Yes. I'm -- I'm also not entirely sure what you  21 mean by "drafting." But apparently I'm being advised not  22 to answer.  23 Q. Well, when I make the reference "drafting a  24 bill," what do you believe that means?  25 A. I mean, there's different stages of a bill.</p>



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1 There's, you know, putting together the first proposal and 2 coming up with all the terms and all the -- there's also 3 making suggestions along the way of, you know, "We don't 4 like this provision. We prefer that provision." Or, you 5 know, "We really hope that comes out before that gets to 6 conference" or things like that. And those kind of things 7 go on all the time. 8 Q. Okay. So let's talk a little bit about the 9 communications that would have gone on in 2005 during the 10 legislative process for HB 1706. Do you recall having any 11 communications regarding HB 1706? 12 A. I don't recall any communications from 2005. 13 Q. Well, you indicated that you may have met with 14 Representative Denny regarding HB 1706? 15 A. It was common for me to go up to the chairman at 16 a hearing and chat, but I don't recall any talks about 17 specific bills. 18 Q. Do you have any responsibility when dealing with 19 a bill, to communicate with the authors of that bill? 20 A. Again, each bill is different. Sometimes you 21 communicate with the authors regularly; other times -- 22 last session, I had over 400 bills. Some of them -- you 23 know, probably 300 of them, I never talked to anybody 24 about. 25 Q. Okay. And so as you sit here today, do you have	45 1 Can you review the document so we can have a 2 discussion about that? 3 A. Yes. 4 (Witness reviews document.) 5 A. I found it, but -- 6 Q. (BY MR. GEAR) Okay. And just so I'm clear, 7 while you were in the governor's office as general 8 counsel, would that have included a responsibility of 9 reviewing and drafting bills as we discussed here today? 10 A. Reviewing bills. I don't know that I drafted any 11 bills. 12 Q. Okay. I thought you said previously during your 13 deposition testimony that there were some bills that you 14 were involved in drafting. 15 A. That came much later. 16 Q. Okay. Much later as in -- what do you mean by 17 that? 18 A. Not during the years that I was working in the 19 general counsel's office. I don't think I drafted any 20 bills. 21 Q. Okay. Would you be involved in coordinating the 22 drafting of those bills as general counsel? 23 A. No. 24 Q. Regarding -- 25 A. Again, by "drafting," I'm talking about drafting	47
1 any memory of communicating with any of the authors or 2 coauthors of HB 1706? 3 A. I don't. 4 Q. When you searched for responsive documents to the 5 document requests in the notice of deposition, did you 6 search for documents from the 2005 time period? 7 A. I didn't. Although, again, the -- what do you 8 call them -- the travel drives were just from this 9 session. 10 Q. And, again, you're unaware of -- 11 A. "This session" meaning this past session. 12 Q. 2011? 13 A. 2011. 14 Q. And you're unaware of whether anyone within the 15 governor's office searched for documents within that time 16 period -- 17 A. I'm not aware -- 18 Q. -- 2005? 19 A. -- as we sit here today. 20 Q. Can you list every allowable form of 21 identification under SB 1706? 22 A. Not off the top of my head, no. 23 Q. Do you -- 24 A. HB 1706. 25 Q. HB 1706. Thank you.	46 1 the initial bill as opposed to making suggestions about 2 provisions that -- 3 Q. Well, when I -- when I refer to drafting, I also 4 mean making revisions, not just the initial bill but all 5 the way through to the final version. Do you understand 6 that? 7 A. Yes. 8 Q. Okay. Would you have been involved in 9 determining what the allowable forms of identification 10 were under HB 1706? 11 MR. MCKENZIE: And I'm going to object on 12 the basis of deliberative process privilege. To the 13 extent you developed any of that during your time as the 14 general counsel or any other position at the govern's 15 office, I would instruct you not to answer. 16 (BY MR. GEAR) Are you refusing to answer based 17 on the advice of your counsel? 18 A. I'm going to follow the advice of my counsel. 19 Q. And if during the course of this deposition, 20 you're following the advice of your counsel and not 21 answering, if you would just verbally state that, that 22 would make the record clearer. 23 A. (Witness nods head.) 24 Q. Thank you. 25 Do you recall any responsibility with HB 1706?	48



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<p>1 A. I don't recall it. I would not be surprised if I 2 was the one who analyzed the bill, but I don't recall it. 3 Q. Okay. And in analyzing the bill, you indicated 4 that you would have created a summary of the bill? 5 A. Yes. 6 Q. And are you aware of whether or not that summary 7 of HB 1706 has been produced to your attorney? 8 A. I don't know. 9 Q. And generally what would a summary of a bill 10 include? 11 MR. MCKENZIE: I caution the witness to 12 answer generally and not specifically as to HB 1706. 13 Q. (BY MR. GEAR) Well, I'm asking generally, 14 because I just would like to know how you go about 15 summarizing the bill? 16 A. As I said, there's -- and maybe this answers the 17 question earlier about -- I think you said what process is 18 used. 19 Q. I did. 20 A. The analysis form kind of was the process. 21 Q. Okay. 22 A. It sort of said, you know, "Give us a summary of 23 what the bill does," and then there would be other 24 questions that change from session to session depending on 25 new things that we -- some things were very simple. Like</p>	49	<p>1 MR. MCKENZIE: Again, I think that's really 2 a close question as to whether or not that's privileged. 3 I caution the witness to answer generally and not -- when 4 you're talking about specifically voter ID bills, I think 5 that you're getting into internal deliberations at the 6 governor's office. So I'm going to instruct you not to 7 answer. 8 A. On the advice of counsel -- 9 Q. (BY MR. GEAR) You're not answering? 10 A. Yes, sir. 11 Q. Have you ever analyzed the effect of a bill on 12 minority voters? And I'm talking about any bill. 13 A. I don't recall ever analyzing a bill by 14 distinguishing between Texans on race or ethnicity or 15 anything like that. 16 Q. Have you ever been asked while in the governor's 17 office, either as general counsel or as a policy 18 analyst -- 19 (Multiple voices.) 20 A. Assistant general counsel. 21 MR. MCKENZIE: Again, I object. 22 A. General counsel was my boss. 23 Q. (BY MR. GEAR) I got you. I got you. That's my 24 mistake. 25 -- assistant general counsel or as a policy</p>	51
<p>1 when's the effective of date of this? So you would put 2 that in there. Other things might be, Does it repeal any 3 existing laws. Make sure we know all about those. And 4 then there might be questions, like, does it cost money? 5 Or whatever was being asked that year. And you would go 6 through the bill and make sure you had noted any instances 7 or any situations or are there any constitutional issues, 8 or whatever it might have been that was being asked. And 9 I can't -- to be honest with you, I can't recall all the 10 questions from just last year, much less than 2005, but -- 11 and they tended to get longer each session as we thought 12 of more things. 13 Then that gave you the process by which you were 14 to analyze what was in the bill and what it did, and did 15 it affect the ability of Texas to bring in new jobs or 16 whatever it might be the questions were. 17 Q. Okay. And I understand, as you sit here today, 18 you don't recall if you actually were involved in the 19 process for HB 1706; is that accurate? 20 A. That is. 21 Q. But I would like to still focus on the analysis 22 of the bill. When analyzing a bill -- and in particular, 23 we can expand this to any voter ID bill. Did you ever 24 analyze a voter ID bill to determine the effect of that 25 particular bill on minority voters?</p>	50	<p>1 analyst to analyze the effects of a bill on minority 2 voters? 3 MR. MCKENZIE: Again, I'm going to object on 4 the basis of privilege. What he was asked by other folks, 5 I think reveals deliberations of the governor's office, 6 and I'm going to instruct the witness not to answer. 7 Q. (BY MR. GEAR) Have you ever analyzed a bill 8 while in the governor's office to determine the effects of 9 the bill on minority voters? 10 MR. MCKENZIE: Again I'm going to object on 11 the same basis. "Ever" would, of course, reveal about 12 voter ID, as well. So I think it would reflect the 13 internal deliberations of the governor on voter ID, as 14 well. 15 Q. (BY MR. GEAR) Have you analyzed a bill while 16 employed by the governor's office to determine the effect 17 on minority voters? 18 MR. MCKENZIE: Same objection. 19 Q. (BY MR. GEAR) Are you refusing to answer on the 20 advice of counsel? 21 A. I'm going to decline to answer on the advice of 22 counsel. 23 Q. Have you ever analyzed a bill in general to 24 determine the effect on minorities in the State of Texas? 25 MR. MCKENZIE: Same objection. Just to make</p>	52



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1 the record clear, you're following the advice of counsel. 2 A. I'm following the advice of counsel. 3 Q. (BY MR. GEAR) Have you ever been asked while 4 employed in the governor's office, to analyze a bill to 5 determine the effect of that bill on minorities in the 6 State of Texas? 7 MR. MCKENZIE: Same objection. 8 Q. (BY MR. GEAR) Have you ever analyzed a bill 9 while employed in the governor's office to determine if it 10 had a disproportionate impact on minorities? 11 MR. MCKENZIE: Same objection. 12 Q. (BY MR. GEAR) Have you analyzed a bill while in 13 the governor's office to determine if the bill had a 14 disproportionate impact on minorities? 15 MR. MCKENZIE: Same objection. 16 Q. (BY MR. GEAR) And you're refusing to answer on 17 advice of your counsel? 18 A. I'm going to decline to answer on the advice of 19 counsel. 20 Q. Have you ever been asked to analyze a bill -- and 21 I'm talking about any bill generally -- while employed in 22 the governor's office to determine the impact on minority 23 voters? 24 MR. MCKENZIE: Same objection. 25 A. I'm going to decline to answer on the advice of	53	1 A. I don't. 2 Q. I may have asked you this, but I'll ask again. 3 Forgive me. 4 Do you recall any communication with anyone 5 regarding HB 1706? 6 A. I do not. If you have any documents to refresh 7 my memory, I'd be happy to look at them. 8 Q. Do you know if the governor took a position on 9 HB 1706? 10 A. I don't recall. 11 Q. Do you have any knowledge as to whether HB 1706, 12 in part, was designed to prevent undocumented or illegal 13 aliens from voting? 14 MR. MCKENZIE: Again, you may answer as to 15 general purpose, but not subjective purpose in the 16 governor's office. 17 A. I don't remember. 18 Q. (BY MR. GEAR) Do you recall any concerns that 19 were expressed by constituents regarding HB 1706? 20 A. No. I really don't remember much about the bill. 21 Q. Okay. And I understand your testimony. 22 Do you recall any position taken by supporters 23 regarding HB 1706? 24 A. I do not. 25 Q. So it's fair to say as we sit here today, you	55
1 counsel. 2 Q. (BY MR. GEAR) What was the purpose of HB 1706? 3 MR. MCKENZIE: I'm going to caution the 4 witness. You may answer as to the general legislative 5 purpose, but not as to any sort of internal purposes that 6 the governor may have had or the governor's office may 7 have had in deciding whether or not to sign or veto any 8 bill or analyze any bill. 9 A. I'm sorry. Could you repeat the question? 10 Q. (BY MR. GEAR) What was the purpose of HB 1706? 11 A. I wasn't involved with the drafting of the bill 12 or promoting it. To be honest with you, I don't really 13 know what the author's purpose was. 14 Q. Do you recall any communications with the 15 governor regarding HB 1706? 16 A. I do not. 17 Q. Do you recall any communications with any of the 18 legislators regarding HB 1706? 19 A. I don't. 20 Q. Do you believe any communications with 21 constituents of the governor regarding HB 1706? 22 A. I don't. 23 Q. Do you recall any communication with any 24 groups -- community groups within the State of Texas 25 regarding HB 1706?	54	1 don't recall anything about HB 1706? 2 A. I recall that the -- now that you showed it to 3 me, I recall that the chairman filed the bill. That's 4 about all I remember. I didn't even remember it passed 5 the house. 6 Q. And when you say "the chairman filed the bill," 7 were you present when that occurred? 8 A. No, no. It was Mary Denny's bill. 9 Q. Mary Denny's bill. 10 A. She's the chairman. 11 Q. And were you present when the bill was filed? 12 A. No. 13 Q. Okay. 14 A. That's a term we use to indicate the person has 15 sponsored the bill and filed it. I have never physically 16 seen anybody put a bill in the hopper. 17 Q. Okay. Do you -- in your capacity in the 18 governor's office, do you sit in during the legislative 19 floor debates? Are you present during those debates? 20 A. Only one time, and it wasn't involving this bill. 21 Back in 2003, I sat in on one floor debate. 22 Q. And do you recall what that bill involved? 23 A. House Bill 4. 24 Q. House Bill 4. 25 And did that have anything to do at all with	56



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<p>1 A. Normally. Now, I have to put one caveat. I 2 don't know if we had the system up that early. We may not 3 have. But that's normally how we receive them. 4 Q. Now, I just want to understand that. You don't 5 know if you had the system up that early. What does that 6 mean? 7 A. The system by which we receive all those bills 8 and review them gets put in place for the session. It's 9 not Evergreen. 10 Q. Okay. 11 A. And so I don't know for -- I don't recall if we 12 set it up in November. It might have been -- we might 13 have been receiving bills a different way. They may 14 have -- you know, I don't know -- 15 Q. Other than -- 16 A. They may have just alerted us to the fact that it 17 had been filed. They may have just had us go on the House 18 website and review them. I'm not sure exactly how I 19 received this one because of when it was done. 20 Q. Okay. When you say "they" may have alerted you, 21 do you know -- can you tell me who "they" is? 22 A. People in the governor's executive office who 23 assign out the bills. And it's somebody different every 24 section. 25 (Exhibit 28 was marked.)</p>	<p>61</p> <p>1 Q. Betty Brown. 2 Do you recall if you had any communication with 3 Representative Brown -- with Representative Betty Brown 4 regarding the HB 218? 5 A. I'm pretty sure I did not. I don't recall if I 6 had any conversations with her staff, but I don't -- I 7 definitely don't recall talking to Representative Brown. 8 Q. So as you sit here today, you don't recall 9 whether you had any conversation with Representative Brown 10 or her staff? 11 A. That's correct. 12 Q. Okay. Also an author of the bill is -- it says 13 "Berman." Do you recall having any communications with 14 Mr. Berman or his staff? 15 A. This might have been the session when 16 Representative Berman was chairman of elections. I 17 don't -- as we sit here, I don't remember having 18 conversations with him; but I wouldn't be surprised if he 19 talked about bills in his committee pretty informally. I 20 don't remember having any sit-down meetings with 21 Representative Berman. 22 Q. As part of your responsibilities in the 23 governor's office in 2007 and -- would you have still been 24 assistant general counsel at the time? 25 A. No.</p>
<p>1 Q. (BY MR. GEAR) All right. I'm showing you what's 2 been marked as Exhibit 28, and I'm going to give you an 3 opportunity to look at that. 4 (Witness reviews document.) 5 Q. (BY MR. GEAR) Have you had an opportunity to 6 review Exhibit No. 28? 7 A. Yes. 8 Q. And can you tell me what that is? 9 A. This is a copy of House Bill 218 from the 2007 10 legislative session. What I don't know is at what stage 11 of the process it is. I don't know if this is the filed 12 version or the version that passed. It doesn't have any 13 markings either in the top left or on the footer that 14 would tell you sort of where in the process it was. 15 Q. And would Exhibit 102 assist you in determining 16 where in the process it was? 17 A. No, it wouldn't tell me what this portion of the 18 text is. 19 Q. But you recognize that as HB 218, which is a 20 version of the bill -- voter ID bill in 2007? 21 A. Yes. And I don't remember every line, but 22 this -- this looks like the bill. 23 Q. Okay. And can you tell me who the authors of the 24 bill were? 25 A. Yes. The author was Betty Brown.</p>	<p>62</p> <p>1 Q. You would have been a policy analyst at that 2 time? 3 A. Yeah. I think the actual title is Governor's 4 Advisor II. I don't know what that means, but... 5 Q. So let's back up for a second so I can understand 6 what responsibilities you would have as a governor's 7 advisor. And so we're talking about 2007, when you 8 returned to the governor's office. Can you tell me what 9 your responsibilities included at that time? 10 A. Yes. Basically all the same responsibilities as 11 when I was in the general counsel's office, minus the 12 legal responsibilities. I was no longer analyzing, you 13 know, settlements from the State or doing any of those 14 kind of strictly legal work. I was now doing entirely 15 policy, and there was an addition of being a liaison to 16 agencies, which is something I did not do when I was 17 general counsel. So I was a liaison of the lottery 18 commission, the racing commission, and at some point, the 19 Attorney General's Office and all the courts. 20 Q. And when you talk about a liaison to agencies, 21 the AG's office and all the courts, dealing specifically 22 with the 2007 voter ID bill, what responsibilities as a 23 liaison would that include? 24 A. None. 25 Q. So does that mean you were not responsible for</p>



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1 communicating with any of the legislators regarding 2 HB 218? 3 A. Well, those are -- those are separate functions. 4 As I say, when I was in general counsel, I had sort of two 5 functions: advising on legislation and legal functions. 6 When I came back, I was in the budget, planning 7 and policy division, where I had, as does everybody there, 8 responsibilities for legislation and also for agencies. 9 You do everything from -- if it's an agency that has 10 meetings, you would attend their meetings and see what was 11 going on with their -- review their agendas, see what 12 they're doing, work on their budget, you know, review that 13 when it comes in, those sorts of thing. None of that 14 would be, I don't think, pertinent to anything that you're 15 interested in today. 16 Q. Okay. And so just so I'm clear and the record is 17 clear, when you returned in 2007, would your 18 responsibilities have remained the same regarding voter ID 19 bills? 20 A. Yes. 21 Q. Okay. And so as a -- as an advisor to the 22 governor at this point, would you have any additional 23 responsibilities regarding photo ID bills? 24 A. None that was different from when I was there 25 before, if that's what you're getting at.	65 1 expenditures. The next 30 days, they basically can't do 2 anything except hear bills in committee. Which means the 3 first 60 days of a 140-day session, they're not entitled 4 to hear any bills. 5 And so the same provision gives the governor the 6 ability to declare something an emergency item, in which 7 case it can be heard earlier. So if you have a bill that 8 either needs more time to be worked on or that the 9 governor wants to highlight or for whatever reason, the 10 governor has that ability. 11 Q. And did you ever play a role in designating bills 12 as an emergency item? 13 A. No. 14 Q. Can you tell me what the process for designating 15 bills as an emergency item would be? 16 A. No. 17 Q. Did you ever advise the governor when or when not 18 to designate bills as an emergency item? 19 A. No. 20 Q. So as you sit here today, are you aware of a 21 formal process for designating bills as an emergency item? 22 A. I am not. 23 Q. Are you aware of what, if any, steps must be 24 taken prior to declaring a subject matter as an emergency 25 item?
66 1 Q. Okay. Was HB 218 ever considered an emergency 2 item by Governor Perry? 3 A. I don't believe so, no. 4 Q. As a policy analyst for Governor Perry, do you 5 know why HB 218 was never considered as an emergency item? 6 MR. MCKENZIE: I'm going to object on the 7 grounds of deliberative process privilege. To the extent 8 that there's nonpublic deliberations that would be 9 revealed by that answer, I'll instruct you not to answer. 10 THE REPORTER: If you could slow down a 11 little bit when you're -- 12 MR. MCKENZIE: Oh, I'm sorry. I'll repeat 13 the objection. 14 I'm going to object on the basis of 15 deliberative process privilege to the extent it reveals 16 any nonpublic deliberations from the governor's office, 17 and I'm going to instruct you not to answer. 18 Q. (BY MR. GEAR) What are "emergency items"?	68 1 A. Prior to declaring or to declare it? 2 Q. Prior to declaring. 3 A. No, not that I know of. 4 Q. Are you aware of any steps that must be taken in 5 declaring a bill as an emergency item or a subject matter 6 as an emergency item? 7 MR. MCKENZIE: Again you may answer as to 8 matters of public record. 9 A. My understanding is the governor issues a 10 proclamation. 11 Q. (BY MR. GEAR) So, for example, does -- prior to 12 the issuance of the proclamation, does that require any 13 analysis of the emergency item? And I'm talking 14 generally. 15 MR. MCKENZIE: I'm still going to object on 16 the basis of privilege, because we know for -- as a 17 foundation that SB 14 was a emergency. So if he replies 18 generally as to what happens with emergencies, you will 19 necessarily be implicating SB 14. 20 So on that basis, I'm going to instruct you 21 not to answer. 22 MR. GEAR: Well, and I would say that I'm 23 asking him generally about the process for declaring 24 emergency items. I didn't ask him specifically about 25 SB 14.



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<p>1 Q. (BY MR. GEAR) So are you refusing to answer my 2 question -- 3 A. Would you rephrase it in a way that doesn't do 4 that? 5 Q. What I asked you generally, and I believe I said 6 that in my initial question, is -- 7 MR. GEAR: Can we just read the question 8 back? Is that possible? 9 (The requested material was read.) 10 MR. MCKENZIE: All right. Same objection, 11 because we know that SB 14, in fact, was declared as an 12 emergency. So I'm still going to instruct him not to 13 answer. 14 Q. (BY MR. GEAR) And you're following the advice of 15 your counsel? 16 A. I will follow the advice of counsel. 17 Q. Based on your experience as a policy analyst for 18 Governor Perry, can declaring a emergency item be viewed 19 as a political decision? 20 MR. MCKENZIE: Same objection. 21 A. I don't even understand the question. 22 Q. (BY MR. GEAR) Can declaring an emergency item be 23 viewed as a political decision? 24 MR. MCKENZIE: Same objection. 25 A. I guess I'm going to decline to answer on advice</p>	69	<p>1 MR. GEAR: We can go back on the record. 2 Q. (BY MR. GEAR) So I asked you who, if anyone, in 3 the governor's office helps the -- or assists the governor 4 in determining whether or not a subject matter becomes an 5 emergency item. Do you recall that question? 6 A. Yes, I recall the question. 7 Q. And do you recall how you answered? 8 A. I said, "I don't know." 9 Q. And how long -- in 2007, how long had you been 10 working in the governor's office? 11 A. In 2007, I had just started back. I had worked 12 there for two sessions before that. 13 Q. Two sessions before that. And you're unaware of 14 who, if anyone, in the governor's office would advise the 15 governor on how subject matters become an emergency item? 16 A. Yes. That wasn't in my job. 17 Q. Were you ever involved in any communications with 18 the governor regarding HB 218 when the topic of discussion 19 was determining if the bill became an emergency item? 20 A. I don't know if there ever was a discussion about 21 it. 22 Q. Well, were there any communications between staff 23 and the governor regarding HB 218 becoming an emergency 24 item? 25 A. I don't know.</p>	71
<p>1 of counsel, but I'm not sure I understand the question. 2 Q. (BY MR. GEAR) Are you aware of any -- any 3 emergency items that have been declared for a political 4 reason? 5 MR. MCKENZIE: Same objection. 6 Q. (BY MR. GEAR) Are you refusing to answer? 7 A. Yes, sir. 8 Q. Who helps the governor determine whether a bill 9 becomes an emergency item? 10 A. I don't know. 11 Q. Is the declaration of a subject matter as a 12 emergency item a common or uncommon occurrence? 13 MR. MCKENZIE: Objection; vague. 14 You can answer. 15 A. There are usually a couple or a few emergency 16 items in a legislative session. Last session, there were 17 five. 18 Q. (BY MR. GEAR) Do you know why the subject matter 19 was declared an emergency item? 20 MR. MCKENZIE: I'll object on the grounds of 21 deliberative process privilege. 22 MR. GEAR: I think we're going to take a 23 break for a second. 24 MR. MCKENZIE: Okay. 25 (Break.)</p>	70	<p>1 Q. Were there any discussions with anyone outside of 2 the governor's office where you were present where the 3 topic of discussion was declaring HB 218 as an emergency 4 item? 5 A. I don't recall any. 6 Q. Do you recall any communications of any kind 7 that -- where the topic was declaring HB 218 as an 8 emergency item? 9 A. I don't -- I don't recall. 10 Q. Do you recall any public record which would 11 support the reason why HB 218 was declared an emergency 12 item? 13 A. It wasn't. Was it? I don't remember HB 218 14 being an emergency item. 15 Q. And you're right. It was not. 16 Do you recall any public communication where the 17 discussion of HB 218 possibly becoming an emergency item 18 was the topic of discussion? 19 A. I don't remember any. 20 Q. Are you aware of anyone in the governor's office 21 involved in the development or drafting of HB 218? 22 A. No. 23 Q. Are you aware of any communications at all 24 between the governor's office and the lieutenant 25 governor's office regarding HB 218?</p>	72



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1 A. No. 2 Q. Are you aware of any communication at all between 3 the governor's office and Ms. Betty Brown regarding 4 HB 218? 5 A. I don't remember any. 6 Q. Are you aware of any communications regarding 7 HB 218 with any of the authors out of the governor's 8 office? 9 A. I don't recall any. 10 Q. Are you aware of any communications with any of 11 the coauthors regarding HB 218? And I'm referring to 12 communications from the governor's office. 13 A. I don't remember any, but I also don't remember 14 who the coauthors were. 15 Q. Okay. If you turn your attention to Exhibit 102, 16 does that refresh your recollection as to who the 17 coauthors were? 18 A. Yes, it does. 19 Q. Can you tell me what the purpose of HB 218 was? 20 MR. MCKENZIE: Again, you may answer as to 21 general purpose. I would ask you not to answer to the 22 extent it would reflect deliberations of the governor's 23 office. 24 A. I don't know what the authors' purpose of the 25 bill was.	73 1 Q. Do you know if HB 218 was designed in part to 2 prevent noncitizens from voting? 3 A. I don't recall. And I'm not sure I ever knew. 4 Q. Would the governor know that? 5 A. I don't know. 6 Q. Would the governor know the purpose or the intent 7 of HB 218? 8 A. We didn't draft the bill, so I wouldn't think he 9 would know the authors' intent in drafting the bill. 10 Q. Was the governor's office involved in any aspect 11 of drafting HB 218? 12 MR. MCKENZIE: I'm going to object on 13 privilege grounds, that that's not public information. 14 A. I guess I'm going to decline to answer on the 15 advice of counsel. 16 Q. (BY MR. GEAR) Do you recall during the public 17 debate, that Betty Brown stated on the House floor that 18 HB 218 was designed to keep illegal aliens or noncitizens 19 and otherwise not qualified from voting? 20 A. I don't recall what she said. 21 Q. Do you recall any communications with the 22 governor regarding preventing noncitizens or illegal 23 aliens from voting as related to HB 218? 24 MR. MCKENZIE: I'm going to object on the 25 deliberative process grounds.
74 1 Q. (BY MR. GEAR) Were you present with the governor 2 during any communications regarding the allowable forms of 3 ID under HB 218? 4 A. I don't recall any -- I don't recall meeting with 5 the governor on this bill at all. 6 Q. Do you recall any meetings with anyone within the 7 Texas state government regarding HB 218? 8 A. No. I must have talked with somebody about it at 9 some point, I'm guessing; but I don't recall any specific 10 discussions with anybody. 11 Q. Okay. When you say you must have talked to 12 somebody at some point, what are you basing that on? 13 A. It's a very fluid process that you -- you know, 14 you go to hearings, they're hearing your bill. And I'm 15 sure I chatted with somebody about it. I don't recall -- 16 and certainly if any legislator had asked about it, I 17 would tell them what I knew. 18 Q. Are you aware of any public debate or testimony 19 regarding HB 218? Do you recall any public debate or 20 testimony? 21 A. There was a hearing in the House. I don't recall 22 specifically. 23 Q. Were you present during that hearing in the 24 House? 25 A. I don't remember being present, but I likely was.	76 1 MR. GEAR: On what grounds, Counselor? 2 MR. MCKENZIE: Deliberative process grounds. 3 Q. (BY MR. GEAR) Are you refusing to answer the 4 question based on the advice of your counsel? 5 A. Yes, sir. 6 Q. You had a chance to review HB 218, and did you 7 review the allowable forms of ID? 8 A. I did. I'd have to go back and look at them 9 again. 10 Q. Would you agree that the allowable forms of ID 11 under HB 218 also include nonphoto IDs? 12 A. I lost my page. 13 I'm sorry. Can you repeat the question? 14 MR. GEAR: Could you read it back. 15 (The requested material was read.) 16 A. And, again, I don't know what step in the process 17 this version of the bill is. I don't know if this is the 18 bill that passed the House or this was just the filed 19 version. But the version of the bill that is marked as 20 Exhibit 28 allows for -- Page 10, Line 20, has forms of ID 21 that do not include a photograph. 22 Q. (BY MR. GEAR) Okay. Do you know if the version 23 that passed the House -- and I'm referring to 218 -- 24 allowed for identification that did not include a 25 photograph?



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<p>1 A. I believe it did.</p> <p>2 Q. Are you aware of any analysis conducted by the</p> <p>3 governor's office regarding HB 218?</p> <p>4 A. Am I aware of one?</p> <p>5 Q. Are you aware of any analysis from the governor's</p> <p>6 office regarding HB 218?</p> <p>7 A. Yes.</p> <p>8 Q. And what would that analysis include?</p> <p>9 MR. MCKENZIE: I'm going to object on the</p> <p>10 deliberative process privilege grounds.</p> <p>11 A. You're asking what it included?</p> <p>12 Q. (BY MR. GEAR) Yes.</p> <p>13 A. I'm going decline to answer on advice of counsel.</p> <p>14 Q. Did you prepare that analysis?</p> <p>15 A. Yes.</p> <p>16 Q. And is that the summary of the bill as you</p> <p>17 described in earlier testimony?</p> <p>18 A. Yes. And whatever else was on our form at the</p> <p>19 time.</p> <p>20 Q. Okay. And regarding the analysis of the summary,</p> <p>21 as you testified, would that have included a comparison of</p> <p>22 previous voter ID bills?</p> <p>23 MR. MCKENZIE: I'm going to object on</p> <p>24 deliberative process privilege grounds as to what the</p> <p>25 content of that analysis included.</p>	77	<p>1 whatever.</p> <p>2 Q. And you stated that you eventually left and ran</p> <p>3 for office, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And was that for the Senate or the House?</p> <p>6 A. House.</p> <p>7 Q. And did you take a public position on photo ID</p> <p>8 when you were running as a candidate for the House?</p> <p>9 A. Well, the bill had already passed, so it wasn't</p> <p>10 much of an issue.</p> <p>11 Q. Did you take a position?</p> <p>12 A. No. I think I just stated that I worked on</p> <p>13 certain bills for the governor.</p> <p>14 Q. And which bills -- which bills did you state you</p> <p>15 worked on?</p> <p>16 A. The photo ID bill, loser pay tort reform, eminent</p> <p>17 domain bill, and probably others.</p> <p>18 Q. Are you aware of any attempt in -- by the</p> <p>19 governor's office to determine if HB 218 had a</p> <p>20 disproportionate impact on minority voters?</p> <p>21 MR. MCKENZIE: Yeah. I'm going to object on</p> <p>22 deliberative process grounds as to what type of analysis</p> <p>23 you guys might do to aid the governor's decision-making.</p> <p>24 A. I'll decline to answer on advice of counsel.</p> <p>25 Q. (BY MR. GEAR) And you referred to HB 218 as</p>	79
<p>1 Q. (BY MR. GEAR) And you're refusing to answer?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Would the summary of HB 218 have involved any</p> <p>4 legal research?</p> <p>5 MR. MCKENZIE: Again, I'm going to object as</p> <p>6 to the content of the analysis.</p> <p>7 A. I decline to answer on the advice of counsel.</p> <p>8 Q. (BY MR. GEAR) Did the governor take a position</p> <p>9 on HB 218?</p> <p>10 MR. MCKENZIE: You may answer as to public</p> <p>11 position.</p> <p>12 A. I don't recall.</p> <p>13 Q. (BY MR. GEAR) Did you take a position on HB 218?</p> <p>14 MR. MCKENZIE: Again, you may answer as to</p> <p>15 public position.</p> <p>16 A. Do I publically take a position?</p> <p>17 Q. (BY MR. GEAR) Yes.</p> <p>18 A. I can't imagine that I did.</p> <p>19 Q. Do you ever take a public position on photo ID</p> <p>20 bills? Have you ever taken?</p> <p>21 A. While I'm working for the governor?</p> <p>22 Q. Yes.</p> <p>23 A. When I'm working for the governor, my views are</p> <p>24 my own. And what I do for the governor reflects my advice</p> <p>25 to the governor, not my public, you know, views or</p>	78	<p>1 passing. Did I understand that testimony?</p> <p>2 A. No. I believe it passed the House.</p> <p>3 Q. And did it pass the Senate?</p> <p>4 A. I don't think so.</p> <p>5 Q. Do you recall when it passed the House?</p> <p>6 A. I do not recall, but it's in Exhibit 102.</p> <p>7 Q. And what does Exhibit 102 indicate?</p> <p>8 A. I believe it's late April. April 24th of 2007.</p> <p>9 Q. Are you aware of any analysis conducted regarding</p> <p>10 either HB 1706 or HB 218 regarding the voters in the State</p> <p>11 of Texas that may not have an allowable form of ID under</p> <p>12 those proposed bills?</p> <p>13 MR. MCKENZIE: Again, I'm going to object to</p> <p>14 the content of the analysis you may have conducted for the</p> <p>15 governor that aided in decision-making. I'm going to</p> <p>16 instruct you not to answer.</p> <p>17 A. I'll decline to answer on the advice of counsel.</p> <p>18 Q. (BY MR. GEAR) Are you aware of any attempts to</p> <p>19 determine the impact of HB 218 on minority voters?</p> <p>20 MR. MCKENZIE: Same objection.</p> <p>21 A. I decline to answer on the advice of counsel.</p> <p>22 Q. (BY MR. GEAR) Are you aware of any</p> <p>23 communications regarding -- out of the governor's office</p> <p>24 regarding any concerns expressed regarding the burden that</p> <p>25 HB 218 may place on minority voters?</p>	80



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1           MR. MCKENZIE: Let me ask a question. Is it 2 public communication you're talking about or all 3 communications? 4           MR. GEAR: Public communications. 5           MR. MCKENZIE: Okay. 6           A. I don't recall. 7        Q. (BY MR. GEAR) And that would also be true for 8 the last question regarding the impact to minority voters. 9 Are you aware of any public communication? 10       A. It wasn't part of my job to draft public 11 communications typically, so I don't recall any. 12       Q. Whose job was it? 13       A. It depends on what the communication was. 14       Q. Regarding photo ID. 15       A. I mean, it depends on what the communication was. 16 If there was press inquiries, the press shop might do it. 17 You know, it depends on what it was. 18       Q. Does the governor have a specific press officer 19 or a person assigned to handle his press releases? 20       A. He has a communications division. 21       Q. Okay. 22       A. I'm not sure if that's what it's called. 23       Q. And do you know who heads up the communications 24 division? 25       A. In 2007, I don't remember who it was.	81	1       Q. Were you involved in any communications with the 2 governor regarding what the forms of allowable 3 identification would be under HB 218? 4           MR. MCKENZIE: Objection on deliberative 5 process grounds. I'm going to instruct you not to answer. 6           A. I decline to answer on the advice of counsel. 7        Q. (BY MR. GEAR) Were you ever involved in any 8 communication with constituents regarding HB 218? 9           A. I don't recall. 10       Q. Were you ever involved in any communications with 11 any member of the legislature regarding HB 218? 12           A. I don't recall specific communications, but I 13 would not be surprised if I talked to members during the 14 course of the session. 15        Q. Do you have any memory of who you may have talked 16 to during the session? 17           A. No. 18        Q. Do you have any memory of communicating with any 19 staff regarding HB 218, the staff of legislators? 20           A. I don't. 21        Q. Do you have any memory or are you aware of any 22 communications of -- communications with the lieutenant 23 governor's office regarding HB 218? 24           A. No. 25        Q. If you engaged in such communication -- and I	83
1       Q. Do you know if there has been a turnover in the 2 head of the communications division -- 3       A. There usually is. 4       Q. -- in 2009? 5       THE REPORTER: Wait. You guys are talking 6 at the same time. 7       THE WITNESS: I'm sorry. 8       Q. (BY MR. GEAR) So the response was there usually 9 is a turnover -- 10       A. Yes. 11       Q. -- in the communications division of the 12 governor's office? 13       A. Yes. 14       Q. Are you aware of anyone in the governor's office 15 that played a role in attempting to ensure the passage of 16 HB 218? 17       MR. MCKENZIE: Again, to the extent it's not 18 public and it might reflect policy decisions of the 19 governor, I'm going to instruct you not to answer the 20 question. 21       A. I decline to answer on advice of counsel. 22       Q. (BY MR. GEAR) I may have asked you this, and I 23 apologize, if I did. Are you aware of whether the 24 governor took a public position on HB 218? 25       A. I don't recall.	82	1       understand that you don't recall the communication -- how 2 would you normally engage in that communication? By 3 phone, by Blackberry? 4           A. Either by phone or seeing them in person. 5        Q. Do you ever send text messages regarding 6 communications? 7           A. No. 8        Q. How does one go about meeting with you in your 9 capacity in the governor's office? Do they need to 10 schedule an appointment, or is it a more informal process? 11       A. It's more informal. People can schedule an 12 appointment; but -- particularly, you know, if it suits 13 their schedule. But people see you in the hallway, people 14 come by. 15       Q. And do you maintain a calendar, or did you 16 maintain a calendar while in the governor's office? 17       A. No. My -- Outlook would have an appointment 18 calendar, if there was one calendared. If you said, you 19 know, "I want to come in and see you at 3 o'clock 20 tomorrow," I'd put it on there so I wouldn't forget it. 21 But if I just went and saw somebody or we talked on the 22 phone, there's no calendar. 23       Q. Sure. 24       A. And that was the vast majority of my 25 communications with people.	84



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<p>1 bills. But we would have had a system in place to make  2 sure that the correct analysis would get -- correct  3 analyst would get the bill that was assigned to him or  4 her.</p> <p>5 Q. And regarding SB 362, would you have written a  6 summary regarding that bill?</p> <p>7 A. Yes.</p> <p>8 Q. Would you have compared SB 362 to previous photo  9 ID legislation?</p> <p>10 MR. MCKENZIE: And again, I'm going to  11 object as to the content of his analysis and instruct you  12 to not answer.</p> <p>13 A. I will decline to answer on advice of counsel.</p> <p>14 Q. (BY MR. GEAR) Do you recall if SB 362 was  15 designated as an emergency item?</p> <p>16 A. I don't believe it was.</p> <p>17 Q. Why not?</p> <p>18 MR. MCKENZIE: Again, I'm going to object on  19 deliberative process privilege grounds.</p> <p>20 A. I decline to answer on advice of counsel.</p> <p>21 Q. (BY MR. GEAR) Do you see that SB 362 allows  22 forms of ID that do not include a photo ID?</p> <p>23 A. I hadn't actually got as far as the forms of ID.</p> <p>24 Q. Take your time and look at it.</p> <p>25 A. I'm sorry. Could you remind me of the question?</p>	89	<p>1 communicated. Is there a process in your review and  2 summary of 362 which would have required you to  3 communicate with legislators?</p> <p>4 A. No.</p> <p>5 Q. And when you say you're very likely, what are you  6 basing that on?</p> <p>7 A. The fact that I attended the hearings, I would  8 have been involved with some of that. There was -- it's  9 not a requirement of my job that I discuss things with  10 legislators. It just either sometimes helped in the  11 performance of the job or sometimes they wanted to know  12 things about the bill, or that sort of thing.</p> <p>13 Q. So you recall attending the hearings for SB 362?</p> <p>14 A. I don't specifically recall it; but I'm -- very,  15 very likely to have either been there in person or  16 watching from my office.</p> <p>17 Q. Okay. And was that function different from your  18 review and summary of HB 1706 and -- I should just say  19 HB 218?</p> <p>20 A. No. The function didn't really change much over  21 time. Basically I was responsible for analyzing the bill  22 and tracking its progress through the legislature. Or  23 lack of progress, depending on the bill. It was basically  24 my responsibility to know what was going on with the bill  25 and where it was in the process.</p>	91
<p>1 Q. The question that I had asked you previously was,  2 do you see that SB 362 allows forms of ID that are  3 nonphoto ID?</p> <p>4 A. Yes. And again, as with the other bill, there is  5 no heading or footer on this, so I don't know what stage  6 of the process this bill was from, whether it was the  7 filed version or the version that passed the Senate or --  8 or what it was. But it does allow for forms of ID other  9 than photo ID.</p> <p>10 Q. And did the filed version allow for other forms  11 of ID other than photo ID?</p> <p>12 A. I believe that it did.</p> <p>13 Q. Were you involved in any communications with the  14 governor regarding SB 362?</p> <p>15 A. I don't recall communicating with the governor  16 about SB 362.</p> <p>17 Q. Were you involved in any communications with the  18 lieutenant governor regarding SB 362?</p> <p>19 A. No.</p> <p>20 Q. Were you involved in any communications with the  21 legislators regarding 362?</p> <p>22 A. I don't recall specific communications, but I  23 very likely communicated with members of the legislature  24 regarding Senate Bill 362.</p> <p>25 Q. Now, you said you were very likely to have</p>	90	<p>1 Q. Do you recall the public debates regarding  2 SB 362?</p> <p>3 A. I don't recall specifically the debate. I'm sure  4 I watched the floor debates.</p> <p>5 Q. Do you recall what the concerns raised by  6 opponents of SB 362 were?</p> <p>7 A. I don't recall the specific concerns, but I'd  8 certainly -- you'd have to refresh my recollection. I  9 mean...</p> <p>10 Q. Are you familiar with the House Research  11 Organization Bill Analyses?</p> <p>12 A. I don't remember it. I'm sure I saw it.</p> <p>13 Q. Have you reviewed House Research Organization  14 Bill Analyses before, previously? Are you familiar  15 with --</p> <p>16 A. Have I ever seen one?</p> <p>17 Q. Yes.</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And do you recall reviewing one in 2009  20 regarding photo ID?</p> <p>21 A. No.</p> <p>22 Q. How would the governor's office receive a copy of  23 the House Research Organization Bill Analyses?</p> <p>24 A. I don't think we did. I think if you wanted to  25 see it, you just went online and looked it up.</p>	92



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<p>1 Q. Do you recall going online and looking it up 2 regarding SB 362? 3 A. I don't. I never used anybody else's analysis in 4 creating my analysis. So if I looked at any limits for a 5 bill, it would be later.</p> <p>6 Q. Did you refer back to your previous analysis on 7 voter ID when considering SB 362? 8 A. I don't recall.</p> <p>9 Q. Based on your review of SB 362, do you see that 10 it allows for a driver's license or a personal ID card 11 issued by DPS?</p> <p>12 A. Where are you?</p> <p>13 Q. SB 362. Let me see if I can direct you to it. 14 A. Page 5?</p> <p>15 Q. Page 5.</p> <p>16 A. I'm sorry, could you repeat the question?</p> <p>17 Q. Do you see that it allows a -- for a photo ID, 18 driver's license or a personal ID card issued by DPS? 19 A. Yes.</p> <p>20 Q. That it also allows for a U.S. military card that 21 contained a photograph? 22 A. Yes.</p> <p>23 Q. That it allowed for a U.S. citizenship 24 certificate that contained a photograph? 25 A. Yes.</p>	<p>93</p> <p>1 received your summary of SB 362? 2 A. Well, she received them from everybody, so she's 3 getting 7,000 of them. 4 Q. Okay. 5 A. So I don't think that she's necessarily reading 6 all of them. But she, I believe, had access to it, the 7 legislative division would, so they could communicate with 8 legislators. And I don't know who else for sure. 9 Q. So it's the legislative division that's 10 responsible for -- for the actual communication with 11 legislators? 12 A. Yes. 13 Q. Okay. And so you indicated that you are aware 14 that the director of -- well, Mary Katherine and the 15 legislative division would have gotten copies of your 16 summary. Anyone else? 17 A. Well, it's not so much they would get copies. I 18 think they would have access to the computer and would 19 pull them up if they wanted to see them. I don't think 20 anybody -- 21 Q. Do you know if -- 22 A. -- as far as I know, actually got a copy. 23 Q. Do you know if it's the normal course after your 24 summaries have been completed for the legislative division 25 to review those summaries?</p>
<p>1 Q. So when you complete your summary, who reads your 2 analysis or your summary? Who does that go to? 3 A. It doesn't go to a specific person. Once it's in 4 the system, it can be -- it can be used by a few people 5 who are entitled to see it for their -- you know, they 6 have all different purposes. 7 Q. Who's entitled to see it? 8 A. I'm not entirely sure who all the people who are 9 entitled to see it. I know, for example, I was not 10 entitled to see other analysts' analyses, because there 11 would be no reason why I would need to see their bill. So 12 I couldn't get into them if I wanted to. 13 Q. So let me ask that question again. 14 Who, that you're aware of, is entitled to review 15 your analysis of SB 362? 16 A. I know that my direct report would, which is the 17 director of the budget planning and policy. 18 Q. And who was that? 19 A. At which time? 20 Q. During the review and summary of SB 362? 21 A. This was 2009. So I guess that was -- forgive 22 me. My memory is terrible. I believe Mary Katherine was 23 the VPP director. Mary Katherine Stout, S-T-O-U-T. 24 Q. And do you know what Mary Katherine would do when 25 she received -- what her responsibilities were once she</p>	<p>94</p> <p>1 A. Again, there are -- in some sessions, there are 2 as many as 7,000 bills, so I doubt they read all of them. 3 I'm sure that they have their own process for knowing when 4 they need to see them. 5 Q. Was SB 362 a legislative priority for the 6 governor -- 7 MR. MCKENZIE: I'm going to object -- 8 Q. (BY MR. GEAR) -- in 2009? 9 MR. MCKENZIE: I'm sorry, I didn't mean to 10 talk over you. 11 I'm going to object on deliberative process 12 grounds because -- to the extent it's a nonpublic priority 13 of the governor. If it's a public priority of the 14 governor, you may answer. 15 A. I'm not quite sure I know what a public priority 16 is. I'll decline with respect to the internal -- 17 (Multiple voices.) 18 Q. (BY MR. GEAR) Okay. I believe I said 19 "legislative priority." Was it a legislative priority for 20 the governor in 2009? 21 MR. MCKENZIE: Same objection. 22 A. Are you asking me if it was an emergency item? 23 Q. (BY MR. GEAR) No. I'm just asking was it a 24 priority in general for the governor in 2009. 25 MR. MCKENZIE: Same objection if it's not</p>



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<p>1 public.</p> <p>2 A. I don't know if it was on any list of priorities</p> <p>3 or not. I don't remember anymore. That's all I --</p> <p>4 Q. (BY MR. GEAR) Does the governor generally create</p> <p>5 a list of priority legislation for any given session?</p> <p>6 A. It all -- it depends how you're operating. You</p> <p>7 might have -- you know, you may have a list of priorities;</p> <p>8 you might just lay out your bills in the state -- of the</p> <p>9 state that you're interested in; the governor may give</p> <p>10 speeches and declare it to be something he has a priority</p> <p>11 and cares about.</p> <p>12 Priorities definitely were -- we used in the</p> <p>13 office on a regular basis. How formal it is, I</p> <p>14 couldn't tell you.</p> <p>15 Q. Were you involved in any decision-making process</p> <p>16 regarding the allowable forms of ID under SB 362?</p> <p>17 MR. MCKENZIE: Again, I'm going to object if</p> <p>18 that information reflects nonpublic internal government</p> <p>19 process communications.</p> <p>20 A. And I'll decline to answer on the advice of</p> <p>21 counsel.</p> <p>22 Q. (BY MR. GEAR) Were there any communications</p> <p>23 regarding the allowable forms of ID pursuant to SB 362?</p> <p>24 MR. MCKENZIE: Same objections to the extent</p> <p>25 they're intra-governor staff communications.</p>	<p>97</p> <p>1 sign onto the bill. So I don't know who the coauthors</p> <p>2 are.</p> <p>3 Q. Well, if you refer to the Texas Legislature</p> <p>4 Online History for 362, does that indicate who the authors</p> <p>5 are and the coauthors, as well as the sponsors?</p> <p>6 A. Yes. And it's different from the copy -- the</p> <p>7 Exhibit 314. Oh, no, it's not. They list both -- I'm</p> <p>8 sorry. They list Frasier and then -- both as author and</p> <p>9 then Nelson and Nichols as coauthor on Exhibit 106.</p> <p>10 Q. Do you know what the intent of SB 362 was for</p> <p>11 either the author, coauthor, sponsor or cosponsors?</p> <p>12 A. I do not.</p> <p>13 Q. Was the intent of a bill something that you</p> <p>14 considered or determined in the analysis of any particular</p> <p>15 bills?</p> <p>16 MR. MCKENZIE: Objection to the extent it</p> <p>17 reflects the content of the analysis that you made for the</p> <p>18 governor or his staff.</p> <p>19 A. I'll decline to answer based on the advice of</p> <p>20 counsel.</p> <p>21 MR. GEAR: I think now would probably be a</p> <p>22 good time to take a lunch break. Let's do maybe half an</p> <p>23 hour?</p> <p>24 MR. MCKENZIE: Yes.</p> <p>25 (Break.)</p>	<p>99</p>
<p>1 MR. GEAR: I think he can answer the</p> <p>2 question "yes" or "no" to were there communications</p> <p>3 regarding SB 362.</p> <p>4 MR. MCKENZIE: Right. Under -- I guess,</p> <p>5 like, incrementally, the questions are getting more</p> <p>6 specific about what the subject matter of the</p> <p>7 communication was. It starts off as voter ID and it</p> <p>8 starts to go into -- about what form of ID. And as it</p> <p>9 gets more and more specific, I feel more inclined to</p> <p>10 object. So I try to let the broad voter ID questions go.</p> <p>11 But the stuff about acceptable forms of ID and stuff,</p> <p>12 that's when I start asserting the objection.</p> <p>13 Q. (BY MR. GEAR) Were there any communications that</p> <p>14 you're aware of regarding SB 362?</p> <p>15 A. I don't recall specifically.</p> <p>16 Q. Do you know what the intent of SB 362 was?</p> <p>17 MR. MCKENZIE: You may answer as to general</p> <p>18 legislative intent, not intra-governor office intent.</p> <p>19 A. I don't know what Senator Frasier's intent was.</p> <p>20 Q. (BY MR. GEAR) Do you know what any of the</p> <p>21 authors' intent was?</p> <p>22 A. When you say "any of the authors" --</p> <p>23 Q. Authors of the bill, 362.</p> <p>24 A. I mean, the way I would do it, the author is the</p> <p>25 author, and the coauthors are folks who are allowed to</p>	<p>98</p> <p>1 MR. GEAR: Back on the record.</p> <p>2 Q. (BY MR. GEAR) We're back after lunch. I'd like</p> <p>3 to take a little more time to really understand what it is</p> <p>4 you do in the governor's office or what you did in the</p> <p>5 governor's office. And as I understand your testimony,</p> <p>6 you indicated that you would receive a bill generally in</p> <p>7 its final version, electronically by a service, the name</p> <p>8 you did not remember; is that correct?</p> <p>9 A. Yeah. I should have inquired about it over</p> <p>10 lunch, but I forgot it.</p> <p>11 Q. And you discussed several times the possibility</p> <p>12 during some of the previous voter ID registration -- I'm</p> <p>13 sorry -- voter ID legislation that the service may not</p> <p>14 have been available. Do you recall that testimony?</p> <p>15 A. Yes.</p> <p>16 Q. And when the service -- in situations where the</p> <p>17 service is not set up or not available, how would the</p> <p>18 governor's office normally receive a bill?</p> <p>19 A. First of all, I don't know how the governor's</p> <p>20 office receives it. I just know how I would receive it.</p> <p>21 Q. Okay.</p> <p>22 A. I think -- they still probably officially receive</p> <p>23 stacks of paper bills in the -- and I think I've seen</p> <p>24 them -- in the central office. So I think the official</p> <p>25 bill is still a stack of -- you know, you get a stack of</p>	<p>100</p>



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1 paper. So that's how they would get that. What I was 2 referring to is the way we would get our assignments to 3 analyze a bill, which would come from -- I would get an 4 e-mail that would say, "These are the bills that were 5 filed in your area today," and it might be 30 of them on, 6 you know, a horrible day. It might be six. It might be 7 eight. Whatever it will be. And you'd have a certain 8 amount of time to get an analysis written in the system so 9 that anybody who's entitled to use it and needed to see 10 it, they could see it. And then over the course of the 11 session, you'd follow that bill.  12 Now, you mentioned being in the final form, and 13 that's kind of the opposite of the way I think about it. 14 To me, the final form is the bill at the end of session, 15 after it's gone through committee and it's either passed 16 or not and it's sort of where it is.  17 What you're referring to as final is I believe 18 what I'm referring to as the filed version, which is the 19 version that has been filed with the House or the Senate. 20 And I guess you mean final in the sense they're done 21 writing it. But that's not what I would consider final. 22 So we refer to those as filed.  23 Q. Okay. So when you -- the type of bill that you 24 generally receive is the filed version, correct?  25 A. Generally.	101  1 the photo ID bills? 2 MR. MCKENZIE: Again, I'm going to object to 3 the extent that their participation was not public and it 4 concerns stuff that they might be done in their 5 deliberative process about photo ID. 6 A. I don't know for certain if anybody. I would be 7 highly doubtful that anybody did. 8 Q. (BY MR. GEAR) And -- 9 A. And again, when I say "draft," I'm not referring 10 to, during the process, saying, "Hey, what do you think 11 about Subsection B? Can we" -- you know, "What do you 12 think about Subsection A. Can we move this? Can we 13 lose" -- I think we're referring at this stage of our 14 questions to what I'm referring to as the filed version, 15 creating a bill. We don't -- you know, very seldom have 16 much role in that that I'm aware of.  17 Q. Now, would you -- do you recall seeing any of the 18 photo ID bills prior to the filed version? 19 A. I don't remember specifically. But between 20 sessions, we would certainly see the bill from last time. 21 Whether somebody would send us a version of a bill and 22 say, "This is what I'm thinking of filing this time," on 23 photo ID specifically, I don't recall. That does happen, 24 but I don't recall if it happened on photo ID.  25 Q. And so is the record is clear, do you recall any	103
1 Q. And when you receive the version that is the 2 filed version, do you -- have you at any time added 3 additional language or drafted additional language to the 4 filed version of a bill?  5 MR. MCKENZIE: And again, you can answer it 6 generally, but not as to specific bills.  7 A. And it's very different with various different 8 bills. But in Texas, the governor typically doesn't have 9 as much role in that as in other states. There are 10 bills where -- there are some bills -- you know, one or 11 two, I was deeply involved in drafting. None involving 12 photo ID.  13 There are other bills where you'll go and suggest 14 a provision or you suggest a provision come out or a 15 member will come to you and say, "We're thinking about 16 putting this provision in. What do you think?" So you're 17 involved in that kind of capacity. It's not very often 18 that you're involved in actually sitting down drafting a 19 bill.  20 Q. (BY MR. GEAR) So as I understand your testimony, 21 you were not involved in drafting any of the photo ID 22 bills?  23 A. Right.  24 Q. And is it also your testimony that no one in the 25 governor's office was involved in the drafting of any of	102  1 communications regarding any of the photo ID bills prior 2 to the -- prior to reviewing or seeing the final 3 version -- 4 A. You mean -- 5 Q. -- filed version? 6 A. -- the filed version? 7 Q. Yes. 8 A. I don't specifically recall them. But as -- 9 again, if there were -- if somebody had submitted 10 something and said, you know, "What do you think about 11 this bill," or "We're thinking of filing this," you know, 12 that is a fairly common occurrence. 13 Q. Okay. 14 A. Now, for the vast -- I had 400 bills last time. 15 I would say for at least 3 -- I had 400 and probably 20. 16 For at least 390 of them, the first time I saw anything 17 about them is when they got filed. 18 Q. And would that be true for the various versions 19 of the photo ID legislation? 20 A. It certainly was true for the first bill we 21 discussed, the 1706. I don't think I ever saw anything 22 ahead of time on House Bill 218. And I don't recall if I 23 saw anything on -- as we got later and later. Because by 24 that time, the legislature had been working on these bills 25 for, you know, three sessions; and it's common to keep	104



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<p>1 working on something in between sessions. So I don't know    2 if I saw anything in particular or somebody saying, "We're    3 thinking about rolling it out this way."</p> <p>4 Q. Would that be the same testimony for SB 362?</p> <p>5 A. Yes.</p> <p>6 Q. Now, you also indicated that you don't like to    7 rely on other people's work when you review a -- or    8 summarize a piece of legislation. Do you recall that    9 testimony?</p> <p>10 A. Yes.</p> <p>11 Q. What do you rely on when summarizing a piece of    12 legislation?</p> <p>13 MR. MCKENZIE: I'm going to object to the    14 extent you have like specific resources that you relied    15 upon in voter ID bills. But you can speak generally as to    16 the types of resources that you look at as a general    17 matter.</p> <p>18 Q. (BY MR. GEAR) And I want to be clear. I'm    19 asking you generally when you are summarizing a bill. And    20 we can step out of the realm of voter ID for a second.    21 I'm trying to understand exactly how you go about that    22 process.</p> <p>23 A. The first thing you do is read the bill. And    24 that's a different process. Some bills are one page and    25 some are 200, so it's different. If you're reading a</p>	<p>1 review in summarizing the voter ID legislation?</p> <p>2 MR. MCKENZIE: Again, I'm going to object on    3 the deliberative process grounds to the extent it would    4 reveal your deliberations as a staff member of the    5 governor's office.</p> <p>6 A. I'll decline to answer on the advice of counsel.</p> <p>7 Q. (BY MR. GEAR) Are there any public sources that    8 you would review regarding the summary of voter ID    9 legislation or that you reviewed?</p> <p>10 MR. MCKENZIE: The same objection. Based on    11 what he elected to look at, be it public or private. If    12 not publicly known, I object on deliberative process    13 grounds that he not answer if it would reveal the    14 deliberations as a staff member of the governor's office.</p> <p>15 Q. (BY MR. GEAR) And you're not answering that    16 question?</p> <p>17 A. On advice of counsel.</p> <p>18 Q. Now, after you complete the review of    19 legislation, you indicated that there was a limited number    20 of people that had access to that summary, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And where, physically, do you -- what physically    23 do you do with the summary after you have completed your    24 summary?</p> <p>25 A. Physically, you hit a button on the computer that</p>
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<p>1 understand your testimony?</p> <p>2 A. There's a format in the software to make sure</p> <p>3 that we have all the different bases covered and also to</p> <p>4 make it -- so that the 7,000 bills -- whoever is looking</p> <p>5 at it isn't looking at all different styles and all</p> <p>6 different forms. You know, they know where to look in</p> <p>7 each bill for whatever they're looking for.</p> <p>8 Q. Okay. So dealing specifically with the voter ID</p> <p>9 legislation, can you tell me who specifically had access</p> <p>10 to your summary?</p> <p>11 A. Again, I'm not really sure exactly who has access</p> <p>12 to them.</p> <p>13 Q. What entity, what division had access to your</p> <p>14 summary?</p> <p>15 A. I know that my direct boss, the director of</p> <p>16 budget planning and policy, would have access to them,</p> <p>17 whether they actually look at them, because there's 7,000</p> <p>18 of them. And I know that the legislative staff does, and</p> <p>19 I'm not sure who else.</p> <p>20 Q. And that's the legislative staff for both the</p> <p>21 House and the Senate?</p> <p>22 A. The governor has one staff that works both. He</p> <p>23 has a director and then a person for the House and a</p> <p>24 person for the Senate.</p> <p>25 Q. Is there any type of report or analysis that's</p>	<p>109</p> <p>1 belief was developed during the course of your service as</p> <p>2 the governor's staff, I would encourage you not to answer.</p> <p>3 To the extent you have an opinion outside of that service,</p> <p>4 you're free to answer.</p> <p>5 A. I have to decline to answer on the advice of</p> <p>6 counsel.</p> <p>7 Q. (BY MR. GEAR) Do you believe that the Crawford</p> <p>8 decision had an impact on the State of Texas' requirements</p> <p>9 to obtain preclearance of the photo identification</p> <p>10 legislation?</p> <p>11 A. I'm not sure I understand.</p> <p>12 Q. Let me ask the question again.</p> <p>13 Do you believe that the Crawford decision had an</p> <p>14 impact on the State of Texas' requirements to obtain</p> <p>15 preclearance, Section 5 preclearance, of its photo</p> <p>16 identification legislation?</p> <p>17 A. I must not remember the decision well enough,</p> <p>18 because I don't remember anything about that. I thought</p> <p>19 our preclearance came from Section 5.</p> <p>20 Q. Do you remember anything about the Crawford</p> <p>21 decision?</p> <p>22 A. I remember some things; I don't remember that.</p> <p>23 Q. Did you apply any portion of the Crawford</p> <p>24 decision in your summary of the photo ID legislation?</p> <p>25 MR. MCKENZIE: Same deliberative process;</p>
<p>1 prepared for legislators?</p> <p>2 A. No, not that I'm aware of. I certainly didn't.</p> <p>3 Q. Have you ever seen the -- or reviewed the</p> <p>4 Crawford decision?</p> <p>5 MR. MCKENZIE: I'm going to object to the</p> <p>6 extent you reviewed it as part of your deliberations for</p> <p>7 the governor. To the extent you reviewed it independent</p> <p>8 of your service with the governor, you may answer the</p> <p>9 question.</p> <p>10 A. I read it when it first came out.</p> <p>11 Q. (BY MR. GEAR) Do you have an opinion regarding</p> <p>12 the Crawford decision?</p> <p>13 MR. MCKENZIE: And it's the same objection</p> <p>14 to the extent the opinion was developed in the course of</p> <p>15 your service as a staff member of the governor's office.</p> <p>16 To the extent you had an opinion you developed independent</p> <p>17 of that, you may answer.</p> <p>18 A. I was working for the governor at the time that</p> <p>19 I -- that I -- anytime that I would have made any use of</p> <p>20 it. So I -- I guess I have to decline to answer on the</p> <p>21 advice of counsel.</p> <p>22 Q. (BY MR. GEAR) Do you believe the Crawford</p> <p>23 decision has an impact on the State of Texas' crafting of</p> <p>24 photo identification laws?</p> <p>25 MR. MCKENZIE: Again to the extent that</p>	<p>110</p> <p>111</p> <p>1 objection. To the extent you -- it reflects deliberations</p> <p>2 that you had while a staff member at the governor's</p> <p>3 office, I will ask you not to answer.</p> <p>4 A. I'll decline to answer on the advice of counsel.</p> <p>5 Q. (BY MR. GEAR) Did you review the Indiana law</p> <p>6 regarding its photo identification provisions?</p> <p>7 MR. MCKENZIE: Same objections.</p> <p>8 A. I'll decline to answer on the advice of counsel.</p> <p>9 Q. (BY MR. GEAR) Have you ever reviewed the Indiana</p> <p>10 law regarding its photo identification provisions?</p> <p>11 MR. MCKENZIE: Same objection to the extent</p> <p>12 that it reveals your analysis prior to the governor's</p> <p>13 final decision on the bill. To the extent you have an</p> <p>14 opinion separate from that service, you may answer.</p> <p>15 A. I'll decline to answer on the advice of counsel.</p> <p>16 Q. (BY MR. GEAR) Are you aware of the provisions of</p> <p>17 the Indiana photo identification legislation?</p> <p>18 MR. MCKENZIE: Same objection to the extent</p> <p>19 you gathered that awareness as part of your research as a</p> <p>20 governor's staffer. To the extent you have independent</p> <p>21 knowledge, you may answer the question.</p> <p>22 MR. GEAR: Well, the fact that he's aware of</p> <p>23 legislation, what privilege are you asserting?</p> <p>24 MR. MCKENZIE: Deliberative process.</p> <p>25 Because it reveals his mental impressions and what he knew</p>



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<p>1 about other laws that may have influenced his final 2 analysis on SB 14.</p> <p>3 Q. (BY MR. GEAR) Are you refusing to answer that 4 question based on the advice of your counsel?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Are you aware of the Georgia voter ID legislation 7 or law?</p> <p>8 MR. MCKENZIE: Same objection.</p> <p>9 Q. (BY MR. GEAR) Have you ever reviewed the Georgia 10 voter ID law?</p> <p>11 MR. MCKENZIE: Same objection. If you did 12 it while the governor's staff, I will instruct you not to 13 answer.</p> <p>14 A. I'll decline to answer on the advice of counsel.</p> <p>15 Q. (BY MR. GEAR) So in the process that you 16 described, you also said that you made recommendations 17 regarding -- regarding the summary of your bills; is that 18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And who the governor's office -- or who do you 21 make those recommendations to?</p> <p>22 A. Well, again you make it in your memo; and then, 23 you know, whoever can access it is entitled to access it.</p> <p>24 Q. (BY MR. GEAR) And generally regarding your 25 recommendations, is there a process that you follow or is</p>	113	<p>1 where he stood on photo ID legislation before I read the 2 text of that bill.</p> <p>3 Q. And does that influence the summary that you 4 would complete --</p> <p>5 (Multiple voices.)</p> <p>6 A. It would influence the recommendation. You 7 already know how he feels about it.</p> <p>8 Q. (BY MR. GEAR) Okay.</p> <p>9 A. Now, that could also change if how he feels about 10 something in particular -- if the bill doesn't comport 11 with that or, you know, if he likes something in general 12 but the way that this is written, he wouldn't like, or 13 whatever that might be.</p> <p>14 Q. And did you provide a recommendation to the 15 governor regarding SB 362?</p> <p>16 A. I'm sure I did.</p> <p>17 Q. And do you recall what that recommendation was?</p> <p>18 MR. MCKENZIE: I'm going to object on the 19 basis of deliberative process privilege.</p> <p>20 A. I'll decline to answer on the advice of counsel.</p> <p>21 Q. (BY MR. GEAR) Do you know what the governor's 22 position was on SB 362?</p> <p>23 MR. MCKENZIE: Objection -- same objection.</p> <p>24 You may answer to the extent it was public. If it's 25 private and only known to governor staff, I'm going to</p>	115
<p>1 there a requirement as to how you lay out that 2 recommendation?</p> <p>3 A. I'm not sure I understand that.</p> <p>4 Q. Generally, I'm just trying to figure out how you 5 lay out recommendations in a bill. And I'm not referring 6 specifically to the photo ID legislation. I'm just trying 7 to understand how you go from summarizing to making 8 recommendations. What do you do in that process?</p> <p>9 A. In addition to summarizing the bill, you're 10 analyzing what the provisions mean and what they do. 11 You're answering the questions that regard policy that 12 apply to all bills which can apply to yours, as well. And 13 then you are taking all of that and trying to fit it into 14 what the governor's philosophy is and whether he would be 15 in favor of that bill or not.</p> <p>16 Now, you can be wrong. I don't -- I can't say 17 that a hundred percent of the time I thought we'd be in 18 favor of something and it worked out that way or vice 19 versa. But that's where you start.</p> <p>20 Q. So prior to completing your summary of SB 362, 21 were you aware of the governor's position on photo ID 22 legislation?</p> <p>23 A. 362 was 2009?</p> <p>24 Q. Yes.</p> <p>25 A. I believe so, yes. I believe that I already knew</p>	114	<p>1 instruct you not to answer.</p> <p>2 A. I don't know if it was public, so I have to 3 decline to answer on the advice of counsel.</p> <p>4 Q. (BY MR. GEAR) Did you have any communications 5 with the governor regarding your summary of SB 362?</p> <p>6 A. I don't think so.</p> <p>7 Q. Did you provide any advice regarding your 8 recommendation of 362 to the governor or anyone in the 9 governor's office?</p> <p>10 A. You mean other than the recommendation itself 11 being advice.</p> <p>12 Q. Oral advice.</p> <p>13 A. I don't recall.</p> <p>14 Q. So is it your position today, during this 15 deposition, that you did not consider the Indiana voter ID 16 law when drafting photo ID legislation for the State of 17 Texas?</p> <p>18 MR. MCKENZIE: It's the same deliberative 19 process objection.</p> <p>20 A. I decline to answer on the advice of counsel.</p> <p>21 Q. (BY MR. GEAR) Did you consider Indiana law when 22 drafting your recommendation for the governor on Texas 23 photo ID legislation?</p> <p>24 MR. MCKENZIE: Same objection.</p> <p>25 A. I decline to answer on advice of counsel.</p>	116



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<p>117</p> <p>1 Q. (BY MR. GEAR) And same question for Georgia law, 2 did you consider Georgia law when drafting your summary of 3 SB 362?</p> <p>4 MR. MCKENZIE: Same objection.</p> <p>5 A. I decline to answer on the advice of counsel.</p> <p>6 Q. (BY MR. GEAR) Did you consider any other 7 existing laws out of state that pertain to photo ID when 8 completing your summary on SB 362?</p> <p>9 MR. MCKENZIE: I'm still going to make the 10 same objection.</p> <p>11 A. I decline to answer on the advice of counsel.</p> <p>12 Q. (BY MR. GEAR) Did you compare SB 362 to the 13 previous photo ID legislation?</p> <p>14 MR. MCKENZIE: I'll make the same objection.</p> <p>15 Q. (BY MR. GEAR) And you're refusing to answer that 16 question?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Who or what body typically drafts legislation 19 that the governor determines is a priority?</p> <p>20 A. I'm sorry?</p> <p>21 Q. Who or what body typically drafts legislation for 22 the governor's consideration where he would ultimately 23 determine that that would be a priority?</p> <p>24 A. I'm not sure I understand the process the way you 25 do. The legislators send their ideas to leg counsel, who</p>	<p>119</p> <p>1 Q. Did you have any communications with ALEC while 2 an employee of the governor's office?</p> <p>3 A. No.</p> <p>4 Q. Are you aware of any communications with ALEC 5 while you were an employee at the governor's office?</p> <p>6 A. Am I aware of any communications between ALEC and 7 the governor's office?</p> <p>8 Q. Yes.</p> <p>9 A. No, I'm not.</p> <p>10 Q. Did you have any substantive input regarding 11 SB 14?</p> <p>12 MR. MCKENZIE: And I'm going to object to 13 the extent that it reflects private intra-government 14 analysis. To the extent it's public, you may answer.</p> <p>15 A. I'll decline to answer on the advice of counsel.</p> <p>16 Q. (BY MR. GEAR) Were you involved in any 17 communications where the consideration of voter ID was 18 discussed as an emergency item? Were you involved in any 19 communications where the consideration of voter ID 20 legislation was involved -- strike that.</p> <p>21 Were you involved in any communications where the 22 consideration of voter ID legislation was considered as an 23 emergency item?</p> <p>24 A. I don't believe so.</p> <p>25 Q. Are you aware of whether or not SB 14 was</p>
<p>118</p> <p>1 Q. draft them for them, and then they file them. 2 And the governor, I guess, will -- I'm not quite 3 sure I understand the priority part. But there is no 4 entity that drafts bills for the governor that I'm aware 5 of.</p> <p>6 Q. And let me see if I can clarify that.</p> <p>7 So it's the legislators that send their drafts or 8 bills to the legislative counsel, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And that would also be true for voter ID bills or 11 voter ID legislation?</p> <p>12 A. I would think so, yes.</p> <p>13 Q. Do you know if any outside entity other than the 14 legislators were involved in the drafting of SB 362?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know if any outside entities other than 17 legislators were involved in the drafting of HB 1706?</p> <p>18 A. I don't know.</p> <p>19 Q. And the same question for HB 218?</p> <p>20 A. I don't know.</p> <p>21 Q. Have you ever heard of ALEC?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know if ALEC was involved in recommending 24 language for SB 362?</p> <p>25 A. I don't know.</p>	<p>120</p> <p>1 determined to be an emergency item?</p> <p>2 A. Yes, it was.</p> <p>3 Q. Do you know why SB 14 was determined to be an 4 emergency item?</p> <p>5 MR. MCKENZIE: Again, you may answer as to 6 matter of public record that you know or in a proclamation 7 or anything to that effect. I would instruct you not to 8 answer to the extent it is not public and it is 9 intra-governor staff communications.</p> <p>10 A. I'm not aware of -- of that. And I don't recall 11 what the proclamation said, but I'm sure I saw it.</p> <p>12 Q. (BY MR. GEAR) Do you know who would be aware of 13 why SB 14 was determined to be an emergency item?</p> <p>14 A. No, I don't recall being involved in the 15 emergency item discussions. Three of the emergency items 16 were assigned to me during the session, and I don't 17 remember being involved in the discussion of making them 18 an emergency for any of them.</p> <p>19 Q. And what three items did you consider as 20 emergency items?</p> <p>21 A. Not that I considered, that I was assigned the 22 bills that might become emergency items.</p> <p>23 Q. And what three items were you assigned that 24 became emergency items?</p> <p>25 A. The voter ID bill, because I had the election law</p>



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1 bills; the loser pays tort reform bill, because I had 2 bills involving the judiciary; and the eminent domain 3 bill, because I had bills involving eminent domain. 4 Q. So let me understand your testimony. As you sit 5 here today, it's your testimony that you were not involved 6 in any communications with the governor or anyone in the 7 governor's office regarding the determination of making 8 SB 14 or the voter ID legislation an emergency item? 9 A. It's my testimony that I don't remember being 10 involved in any discussions or communications. 11 Q. Do you know who would assist the governor in 12 determining if voter ID is an emergency item? 13 A. I do not. 14 Q. Are you aware of any written communications in 15 the governor's office that would identify why SB 14 was 16 determined to be an emergency item? 17 A. There would be a proclamation issued by the 18 governor. 19 Q. Okay. And who, if anyone, within the governor's 20 office would assist the governor in writing that 21 proclamation? 22 A. Well, I'm not specifically certain who would 23 assist them in writing it. And it may be different from 24 bill to bill. I don't know. 25 Q. Did you assist them in drafting the proclamation?	121 1 if she remembers the meeting. It wasn't very long. Just 2 sort of said, "Good luck tomorrow," and chatted with her 3 for a few minutes. 4 Q. And what did you discuss? 5 MR. MCKENZIE: We're probably going to have 6 a debate about this, but we have a pending motion as to 7 whether or not communications between legislators and the 8 governor's office about pending legislation are 9 privileged. So until that gets resolved, I'm going to 10 assert the legislative privilege to protect Patricia 11 Harless's confidences. 12 MR. GEAR: Are you saying that he has a 13 legislative privilege on it? 14 MR. MCKENZIE: No. Patricia Harless has a 15 legislative privilege, but he can't disclose it without 16 busting her confidentiality. 17 Q. (BY MR. GEAR) Can you tell me when that 18 conversation took place? 19 A. I believe it was the night before the bill was to 20 be laid out. It may not have -- do you have a copy of 21 this for Senate Bill 14? 22 Q. I do. 23 (Exhibit 223 was marked.) 24 Q. (BY MR. GEAR) I'm showing you what's -- 25 MR. GEAR: And I'm sorry, Counsel, I only
1 A. I don't recall that. There was -- sometimes they 2 would send me something that involved my area and said, 3 "We're thinking about writing this. Is this correct?" I 4 don't remember if I got to do that with respect to the 5 emergencies, because I don't -- I don't know that they're 6 that involved in writing. 7 Q. So I want to take you back to the communications 8 regarding SB 14. Do you recall any communications between 9 the governor and his staff regarding SB 14? 10 A. Do I recall any discussions between the governor 11 and his staff? 12 Q. That's correct. Regarding SB 14. 13 A. I don't recall meeting with the governor on the 14 bill, but I wouldn't be surprised if I did. But I don't 15 recall meeting with him. 16 Q. Do you recall meeting with anyone in the 17 lieutenant governor's office regarding SB 14? 18 A. I'm virtually certain I didn't. 19 Q. Do you recall meeting with any legislators 20 regarding SB 14? 21 A. Yes. 22 Q. What legislators or which legislators did you 23 meet with? 24 A. The night before the bill was laid out in the 25 House, I went and saw Patricia Harless. I don't remember	122 1 have one copy of this. 2 Q. (BY MR. GEAR) But I'm showing you what's been 3 marked as Exhibit 223 in another deposition. 4 (Witness reviews document.) 5 A. Looks like it was only considered one time. It 6 didn't go back on a point of order. If that's the case, 7 then it was in late March. And I just wandered down to 8 her office to see Colby and say hi to Patricia Harless 9 and, you know, talk with her about her big day tomorrow. 10 Q. (BY MR. GEAR) And did you discuss SB 14? 11 A. Yes. 12 Q. And who, if anyone else, was present during that 13 discussion? 14 A. I don't remember. 15 Q. Well, you just mentioned her -- one of her staff, 16 correct? 17 A. I went to see Colby. I don't -- I don't remember 18 if he went in or not. I just chatted with her for a few 19 minutes. 20 Q. Did you provide Ms. Harless with any written 21 documents or communication during your discussion? 22 A. No. 23 Q. Do you recall any communications with the 24 Secretary of State's office in your capacity as a policy 25 analyst for the governor's office and tying it into SB 14?



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<p>1 A. I don't recall. I spoke to them so often on all 2 manner of election bills, that I can't recall if I ever 3 spoke to them about SB 14.</p> <p>4 Q. Do you recall if the Secretary of State's office 5 expressed any concerns regarding SB 14?</p> <p>6 A. I don't remember.</p> <p>7 Q. Do you recall if the Secretary of State's office 8 supported the provisions in SB 14?</p> <p>9 MR. MCKENZIE: I'm going to object on 10 deliberative process grounds. We've also asserted as to 11 executive agencies that are communicating with the 12 governor's office, so I'm going to instruct the witness 13 not to answer.</p> <p>14 A. In that case, I'll decline to answer on the 15 advice of counsel.</p> <p>16 Q. (BY MR. GEAR) Do you recall if there were any 17 communications with constituents regarding SB 14?</p> <p>18 Constituents of the governor.</p> <p>19 A. In other words, Texans?</p> <p>20 Q. Yes.</p> <p>21 A. There was one group that came to see me regarding 22 their entire legislative agenda and everything they were 23 hoping to pass, and I presume that they talked about 24 Senate Bill 14. I do not recall specifically.</p> <p>25 Q. And what was the name of the group that came?</p>	<p>125</p> <p>1 Q. Okay.</p> <p>2 A. But, no, I don't remember any names.</p> <p>3 Q. Who, if anyone, was present other than you from 4 your office?</p> <p>5 A. Probably nobody.</p> <p>6 Q. What was the subject matter of the communications 7 with the King Street Patriots?</p> <p>8 A. As I said, they had a list of topics. They 9 weren't bills, because they hadn't drafted any bills. But 10 they had a list of topics that they were hoping someone 11 would support, and they were going to go down and meet 12 with legislators. And they stopped by to show us their -- 13 you know, that they were going to do this and hope that we 14 would enjoy their bills.</p> <p>15 Q. Did one of the list of topics include the photo 16 ID legislation?</p> <p>17 A. I don't remember. It was a long list. I think 18 it was probably their first time at the Capitol, and they 19 came with a very long list of things.</p> <p>20 Q. You indicated this as a group that met with you 21 regarding SB 14. Did I misunderstand your testimony?</p> <p>22 A. Well, I don't remember if they -- they probably 23 did, because all of their bills were election law bills. 24 So they -- I don't remember specifically talking with them 25 about SB 14.</p>
<p>1 A. They were the King Street Patriots.</p> <p>2 Q. And that meeting was at the governor's office?</p> <p>3 A. We had a few meetings. There was a meeting in my 4 office -- probably a couple of meetings in my office. And 5 I think I saw them one day down in the Capitol. My office 6 is not in the Capitol.</p> <p>7 Q. So let's just start with the first meeting that 8 you recall. Can you tell me when that meeting took place?</p> <p>9 A. It was likely before session started. Because if 10 I recall correctly, they were coming around with a long 11 list of bills they were hoping that legislators would sign 12 off on. And they would get somebody to introduce --</p> <p>13 Q. When you say "they" -- you've identified the King 14 String Patriots, but can you tell me who "they" are?</p> <p>15 A. The leader is a lady named Catherine Engelbrecht.</p> <p>16 And I think she had other people with her -- one or two 17 other people, but I don't remember that.</p> <p>18 Q. So from your memory, there were three, maybe 19 more, individuals from the King Street Patriots involved 20 in this first meeting?</p> <p>21 A. Probably not -- my office isn't that big. So it 22 was possibly two people or maybe three at the most.</p> <p>23 Q. And as you sit here today, do you remember the 24 names of the other two individuals that were --</p> <p>25 A. I don't even know for a fact that there were.</p>	<p>126</p> <p>1 Q. What other election law bills did they discuss 2 with you?</p> <p>3 A. They had -- there were numerous bills about 4 registration and about conduct of elections and -- I don't 5 remember the specifics. It was several pages, single 6 spaced, of individual ideas they had.</p> <p>7 Q. And when -- in response to the deposition notice 8 and the request for documents, did you produce any 9 communications between yourself and the King Street 10 Patriots?</p> <p>11 A. No, I do not have anything.</p> <p>12 Q. Did they provide you any written communication 13 during their meeting, the first meeting that you 14 discussed?</p> <p>15 A. I don't recall. They had a list. I remember, 16 because it was pages long. I don't remember if they gave 17 me a copy.</p> <p>18 Q. And you discussed the second meeting. Was that 19 also in your office?</p> <p>20 A. I think -- I think I remember Ms. Engelbrecht 21 coming back after bills had been filed and there were 22 actual bill numbers on bills. So I think she had a very 23 similar list -- may not have been -- they may just have 24 been similar format. But she had another list of bills 25 with actual numbers on them and sponsors and authors.</p>



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<p>1       Q. Was SB 14 specifically discussed during that  2 meeting?  3       A. I don't remember.  4       Q. Do you recall who was with Ms. Engelbrecht?  5       A. No.  6       Q. Do you recall if there was anyone else present  7 from the governor's office during this meeting?  8       A. I doubt that there was.  9       Q. Do you know how long this meeting took place?  10      A. Oh, probably 20 minutes, half an hour. That's  11 usually the length of most of my meetings.  12      Q. What, if any, promises were made to  13 Ms. Engelbrecht and the King Street Patriots regarding  14 photo ID legislation?  15      A. I don't remember much of what was said, but I can  16 tell you I didn't promise anybody anything. From where I  17 am, I'm in no position to promise anybody that they're  18 going to pass or not pass or anything a bill.  19      Q. Did you relay the information from these two  20 meetings to the governor?  21      A. No.  22            MR. MCKENZIE: I was going to object on the  23 basis of deliberative process privilege.  24            Q. (BY MR. GEAR) Did you consider the information  25 provided by the King Street Patriots when completing a </p>	129	<p>1 meeting?  2       A. No. I just happened by. I just wanted to say hi  3 to Representative Aliseda.  4       Q. Did you attend the meeting?  5       A. For a few minutes.  6       Q. Do you recall the subject matter of the meeting  7 with the King Street Patriots and Mr. Aliseda?  8       A. While I was there, they were talking about an  9 English-only language.  10      Q. As it relates to?  11      A. I'm not sure, because I didn't participate in the  12 whole thing. But I think that there was some talk of  13 carrying a bill regarding English only. I don't know what  14 that really -- whether it was in schools or whether it was  15 in -- I don't -- public documents. I don't remember.  16      Q. Do you recall if the topic of discussion in the  17 first two meetings that you had addressed the issue of  18 English only?  19      A. I don't know if that was one of the bills. It  20 probably was, but I don't know.  21      Q. Do you have an opinion as to whether or not SB 14  22 should be in English only language?  23      A. I don't understand the question.  24      Q. And it wasn't a very good question.  25      Do you have an opinion as to whether or not the </p>	131
<p>1 summary of SB 14?  2            MR. MCKENZIE: Same objection. To the  3 extent that it reflects your private deliberations that  4 are not public, I would instruct you not to answer.  5       A. I'll decline to answer on the advice of counsel.  6       Q. (BY MR. GEAR) Do you recall any other groups  7 that you met with -- actually, strike that.  8            I believe you indicated that there may have been  9 more than just two meetings with the King Street Patriots?  10      A. Yes. I think I walked in on a meeting they were  11 having in the Capitol with a legislator.  12      Q. And what legislator were they having a meeting  13 with?  14      A. Representative Aliseda.  15      Q. Was that Ms. Engelbrecht?  16      A. Yes.  17      Q. Can you tell me who else was present during that  18 meeting?  19      A. No. But there were several people there.  20      Q. Several people. Can you give me a number?  21      A. Probably half a dozen. I remember, because it  22 crowded his small office.  23      Q. Were there any other legislators?  24      A. I don't think so.  25      Q. Was anyone from your office present during that </p>	130	<p>1 provisions of SB 14, when implemented, should be in  2 English only? And let me continue to try to clarify that  3 for you.  4       The election material that pertains to the  5 requirements of SB 14, do you believe that that should be  6 in English only?  7       A. That never even occurred to me. Federal law  8 requires -- Texas statewide has to provide English and  9 Spanish. And we provide Vietnamese ballots in certain  10 areas. And I think starting this election, Korean, in, I  11 guess, Harris County.  12      Q. Do you know if the governor has taken a position  13 on English only as it applies to SB 14?  14      A. I don't think it's ever come up.  15      Q. Do you know what Mr. Aliseda did in reference to  16 the discussions with the King Street Patriots?  17      A. No. No.  18      Q. You testified earlier that you were involved --  19 that you actually attended some of the legislative debates  20 regarding photo ID; is that correct?  21      A. No. What I testified was that the only time I  22 ever attended a floor debate was for House Bill 4, the  23 tort reform bill in 2003. Other than that, I've never  24 been on the floor -- well, this session, I was on the  25 floor of the Senate for an eminent domain bill. But I've </p>	132



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<p>1 never been on the floor for any debate regarding voter ID.  2 Q. Were you aware that SB 14 was a controversial  3 legislation?  4 MR. MCKENZIE: I'm going to object to the  5 extent that your awareness was gathered as part of your  6 deliberations as a governor's office official. To the  7 extent you have an independent basis for your belief, you  8 may answer that question.  9 Q. (BY MR. GEAR) Well, based on what's available in  10 the public record, were you aware that SB 14 was  11 controversial?  12 A. I know there were opponents.  13 Q. Opponents who expressed concerns about SB 14?  14 A. Yes. But I'm also aware that there was a poll  15 that said 70 percent of Texans favored it, so I don't  16 consider that controversial.  17 Q. So you did not consider SB 14 controversial  18 legislation?  19 A. Again, that's -- you can decide what you mean by  20 "controversial." I think there were opponents of the  21 bill, and they made their opposition known.  22 Q. Well -- and I'm not here to testify. So what do  23 you believe I mean when I say the term "controversial"?  24 A. That's really open to interpretation.  25 Q. Well, what is your interpretation of it?</p>	<p>133</p> <p>1 A. Do I recall concerns expressed by opponents?  2 Q. That's correct. Any concerns expressed by  3 opponents?  4 A. Yes.  5 Q. And what concerns do you recall?  6 A. I recall opponents saying that they thought  7 elderly or poor voters wouldn't have photo IDs.  8 Q. In your consideration or summary of SB 14, did  9 you attempt to determine whether or not SB 14 would have a  10 disproportionate impact on elderly or poor voters?  11 MR. MCKENZIE: I'm going to object on  12 deliberative process grounds.  13 A. I'll decline to answer on the advice of counsel.  14 Q. (BY MR. GEAR) Are you aware of any studies or  15 analysis that would support the position that SB 14 would  16 have a disproportionate impact on elderly or poor voters?  17 MR. MCKENZIE: And again, to the extent you  18 gathered those analyses or reports in furtherance of your  19 duties as a governor employee, I would instruct you not to  20 answer that question.  21 A. I don't recall any.  22 Q. (BY MR. GEAR) Are you aware of any independent  23 studies regarding the effect of SB 14 on poor or elderly  24 voters?  25 MR. MCKENZIE: Same objection.</p>
<p>1 A. I would think that if there was a big split in  2 the public on something, it's controversial.  3 Q. And you don't believe that there was a split in  4 the public when considering SB 14?  5 A. I think the political class was very split on it.  6 I think the public seemed to overwhelmingly support it.  7 Q. And when you say "the political class," what do  8 you mean by that?  9 A. People who are involved in legislation and  10 politics.  11 Q. And when you say "political class," are you  12 referring to Democrats and Republicans?  13 A. Just in general.  14 Q. Okay. And how was the political class split when  15 considering SB 14?  16 A. In the legislature, it was split on partisan  17 lines mostly.  18 Q. Do you know how Democrats voted on SB 14,  19 generally?  20 A. Only in the House.  21 Q. Do you remember what that was?  22 A. I remember that Representative Pickett voted  23 "yes," and he was the only Democrat who did.  24 Q. Do you recall any of the concerns expressed by  25 opponents to SB 14?</p>	<p>134</p> <p>1 A. I don't recall any.  2 Q. (BY MR. GEAR) Are you aware that in the state of  3 Texas, minorities are disproportionately poor to the rest  4 of the population?  5 MR. MCKENZIE: And it's the same objection.  6 Q. (BY MR. GEAR) And I'm asking you, generally are  7 you aware that in the state of Texas, that minorities are  8 the population that are disproportionately poor to other  9 Texans?  10 A. I think that's a very broad statement, and I  11 don't have statistics on the economics.  12 Q. (BY MR. GEAR) Did you look at any statistics on  13 the economics of -- that would break down the poverty  14 lines of elderly or the poor?  15 MR. MCKENZIE: I'm going to object to the  16 extent that you did that as part of your deliberations as  17 a governor employee. To the extent you just have that  18 knowledge outside of that experience, you may answer the  19 question.  20 A. I'll decline to answer on the advice of counsel.  21 Q. (BY MR. GEAR) Did you deplete a summary of  22 SB 14?  23 A. Yes.  24 Q. And did you follow the same process in hitting  25 the button and sending that summary to an electronic file?</p>



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<p>1 A. Yes.</p> <p>2 Q. And is it also accurate that only certain people</p> <p>3 had access to your summary?</p> <p>4 A. Yes.</p> <p>5 Q. And can you tell me who had access to that</p> <p>6 summary?</p> <p>7 A. Again, my answer is the same as for the other</p> <p>8 ones. I don't know exactly who did.</p> <p>9 Q. Can you tell me the departments or divisions that</p> <p>10 had access to it?</p> <p>11 A. The ones that I know are the division director of</p> <p>12 BPP, where I worked, and the legislative staff.</p> <p>13 Q. So regarding SB 14, did you conduct any analysis</p> <p>14 regarding the impact of SB 14 on minority voters?</p> <p>15 MR. MCKENZIE: And again, I'm beginning to</p> <p>16 object on deliberative process grounds.</p> <p>17 A. I'll decline to answer on the advice of counsel.</p> <p>18 Q. (BY MR. GEAR) Are you aware of any independent</p> <p>19 study regarding voter ID legislation and the impact on</p> <p>20 minority voters? And I'm saying any independent study.</p> <p>21 MR. MCKENZIE: I understand. But to the</p> <p>22 extent that it's part of the public domain and you pulled</p> <p>23 it from that domain and used it as part of your analysis</p> <p>24 in recommending or not recommending a bill to the</p> <p>25 governor, I would suggest or I would instruct you not to</p>	<p>137</p> <p>1 MR. MCKENZIE: And same objection. To the</p> <p>2 extent you pulled them from the public record and relied</p> <p>3 upon them for analysis that you ultimately presented to</p> <p>4 the governor or his staff, I would instruct you not to</p> <p>5 answer.</p> <p>6 MR. GEAR: Again, I think that's a "yes" or</p> <p>7 "no" answer, if he's aware of any studies on the public</p> <p>8 record that address the impact of voter ID legislation on</p> <p>9 minority voters.</p> <p>10 MR. MCKENZIE: No, I understand. And I</p> <p>11 understand you have to make your record. But I still am</p> <p>12 going to assert the objection, because his awareness</p> <p>13 reflects his knowledge; and if he acquired that knowledge</p> <p>14 as part of his deliberations for the governor's office,</p> <p>15 then I think it would reflect the internal thought</p> <p>16 processes of the governor's staff. And so I object on</p> <p>17 that basis.</p> <p>18 But to the extent you have knowledge outside</p> <p>19 of your service as a governor employee, then you may</p> <p>20 answer his question.</p> <p>21 A. I don't have any knowledge of studies.</p> <p>22 Q. (BY MR. GEAR) As you sit here today, are you</p> <p>23 aware of any studies that considered the burden on</p> <p>24 minority voters regarding voter ID legislation?</p> <p>25 MR. MCKENZIE: And it's the same objection.</p>
<p>1 answer the question.</p> <p>2 Q. (BY MR. GEAR) And I want to be clear before you</p> <p>3 assert any privilege on this. I'm asking you, generally</p> <p>4 are you, as you sit here today, aware of any analysis</p> <p>5 regarding the impact of voter ID legislation on</p> <p>6 minorities?</p> <p>7 MR. MCKENZIE: Right. So there might be</p> <p>8 some analyses after the fact -- after your work in the</p> <p>9 governor's office. But if it's during, I would say don't</p> <p>10 answer the question.</p> <p>11 A. I don't tend to read analyses like that for, you</p> <p>12 know, personal reading. Anything that I would do in that</p> <p>13 regard would have been in my duties at the governor's</p> <p>14 office. So in that respect, I would have to decline to</p> <p>15 answer. But I don't know what studies you're referring</p> <p>16 to. I don't recall any.</p> <p>17 Q. (BY MR. GEAR) Well, and that's what I'm trying</p> <p>18 to find out, did you review any studies. I'm not trying</p> <p>19 to testify for you.</p> <p>20 A. I don't recall any.</p> <p>21 Q. Okay.</p> <p>22 A. I don't know.</p> <p>23 Q. Are you aware of any studies on the public record</p> <p>24 that show that there is an impact to minority voters</p> <p>25 regarding SB 14?</p>	<p>138</p> <p>1 A. I don't have any personal awareness of studies.</p> <p>2 Q. (BY MR. GEAR) Is there a public record, an</p> <p>3 analysis, a report that would show that the -- there was a</p> <p>4 consideration of the burden regarding voter ID legislation</p> <p>5 on minority voters?</p> <p>6 A. I don't know.</p> <p>7 Q. And you didn't review anything in the public</p> <p>8 record; is that correct?</p> <p>9 MR. MCKENZIE: Objection on deliberative</p> <p>10 process grounds.</p> <p>11 A. I'm still not sure what you mean by "public</p> <p>12 record." We've been using this phrase since this morning,</p> <p>13 and I don't know what you mean by that.</p> <p>14 Q. (BY MR. GEAR) Well, my understanding is that</p> <p>15 the -- as the case currently exists, the State of Texas --</p> <p>16 MR. GEAR: And you can correct me if I'm</p> <p>17 wrong.</p> <p>18 Q. (BY MR. GEAR) -- has been allowing deponents to</p> <p>19 testify to the public report. You prepared for the</p> <p>20 deposition with your counsel. I don't know what your</p> <p>21 counsel told you about what the public record consists of.</p> <p>22 I'm trying to understand what your testimony is and what</p> <p>23 you know. You're asserting a deliberative process</p> <p>24 privilege over the public record, so maybe we need to</p> <p>25 clarify right now what -- how are you interpreting the</p>



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<p>1 term "public record"?</p> <p>2 A. I literally -- I don't know what you mean when</p> <p>3 you ask that. I don't know if you mean studies by the</p> <p>4 government or -- I don't -- what's a -- I don't know what</p> <p>5 "public record" is. I mean, a record of a case I know is</p> <p>6 the file. I don't know what you mean by "the public</p> <p>7 record" in general. I mean, I'm not trying to be</p> <p>8 obstreperous --</p> <p>9 Q. There was --</p> <p>10 A. -- I really don't know.</p> <p>11 Q. There was public debate on this, correct?</p> <p>12 A. Yes.</p> <p>13 Q. There was recorded and public hearings during the</p> <p>14 debate in the House and the Senate on SB 14, correct?</p> <p>15 A. Yes.</p> <p>16 Q. There were exhibits that were offered during the</p> <p>17 public debate on SB 14 in both the House and the Senate.</p> <p>18 Are you aware of that?</p> <p>19 A. I presume there were exhibits in both Houses.</p> <p>20 Q. There was testimony by the Secretary of State's</p> <p>21 office during the consideration of SB 14. Are you aware</p> <p>22 of that?</p> <p>23 A. Yes.</p> <p>24 Q. And there was testimony by various citizens of</p> <p>25 State of Texas regarding SB 14. Are you aware of that?</p>	<p>141</p> <p>1 there and you didn't rely on it as part of your</p> <p>2 deliberations, then I would say answer the question. Or</p> <p>3 if you don't know the answer to the question, then answer</p> <p>4 that. But to the extent you know and it was something</p> <p>5 that you may have pulled from the public sphere and it's</p> <p>6 not publically available, what exactly you used, then I</p> <p>7 would instruct you not to answer.</p> <p>8 Q. (BY MR. GEAR) Your counsel used the term</p> <p>9 "appeared in the public record," so I will stay with that</p> <p>10 terminology when I'm asking you about the public record.</p> <p>11 A. Okay.</p> <p>12 Q. Do you understand?</p> <p>13 So I'm asking you, are you aware of any</p> <p>14 communications that appeared in the public record that</p> <p>15 would show that SB 14 has a disproportionate impact on</p> <p>16 minority voters?</p> <p>17 MR. MCKENZIE: Same objection to the extent</p> <p>18 you've got it as part of your analyses. But if not, then</p> <p>19 go ahead and answer.</p> <p>20 A. I'm aware that there were arguments that there</p> <p>21 was a disproportionate impact. I'm not aware of studies</p> <p>22 or documentation or any of that. I don't recall any of</p> <p>23 that.</p> <p>24 Q. (BY MR. GEAR) And you did not summarize or</p> <p>25 analyze that issue; is that correct?</p>
<p>1 A. Yes.</p> <p>2 Q. And are you aware of testimony by the Texas</p> <p>3 Attorney General's Office recording SB 14?</p> <p>4 A. Actually, I don't remember that.</p> <p>5 Q. So when I reference the "public record," I'm</p> <p>6 referencing testimony, documents or communications that</p> <p>7 were distributed during the public debates on SB 14. Do</p> <p>8 you understand that?</p> <p>9 A. Yes. Now, when you asked about the studies in</p> <p>10 the public record, are you saying studies that were</p> <p>11 attached as exhibits to debate in the legislature?</p> <p>12 Q. Studies that were used -- attached to debates,</p> <p>13 used as consideration for the passage of SB 14. Does that</p> <p>14 make sense?</p> <p>15 MR. MCKENZIE: For the State of Texas's</p> <p>16 position on public record, we're allowing witnesses to</p> <p>17 testify about things that they said or things that might</p> <p>18 have appeared in the public record that they talked about,</p> <p>19 and to explain precisely what they meant when they said</p> <p>20 that stuff on the public record. When it's stuff in the</p> <p>21 public record that people may have looked at and privately</p> <p>22 held in their files as a basis to offer advice, we're still</p> <p>23 asserting the objection.</p> <p>24 But to the extent that you know that</p> <p>25 information, you never relied on it and it's just out</p>	<p>142</p> <p>144</p> <p>1 MR. MCKENZIE: Same objection, deliberative</p> <p>2 process objection.</p> <p>3 A. I would have to decline to answer on the advice</p> <p>4 of counsel.</p> <p>5 Q. (BY MR. GEAR) Are you aware of any</p> <p>6 communications that appear in the public record that would</p> <p>7 support that SB 14 imposed a burden on minority voters?</p> <p>8 MR. MCKENZIE: And same objection. To the</p> <p>9 extent that there are communications you relied on in your</p> <p>10 analysis and is not known that you relied on those, please</p> <p>11 don't answer. To the extent that you know about them and</p> <p>12 they were of no factor in your analysis, you're free to</p> <p>13 answer.</p> <p>14 Q. (BY MR. GEAR) And again, that appear in the</p> <p>15 public record, as your counsel has now stated.</p> <p>16 A. I recall that there was argument. I don't recall</p> <p>17 the specifics of what -- what folks used to bolster their</p> <p>18 argument.</p> <p>19 Q. And what was the argument regarding the burden of</p> <p>20 SB 14 by opponents? Do you recall that?</p> <p>21 A. I recall the argument that minorities or poor</p> <p>22 voters wouldn't have as much -- wouldn't be as likely to</p> <p>23 have a photo ID. I don't remember if there was any</p> <p>24 evidence to bolster that. And I remember talk about one</p> <p>25 district where the representative thought they'd have to</p>



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<p>1 drive a long way to get -- but I don't remember any -- you    2 know, any specifics about that.    3 Q. During the analysis or the summary of SB 14, did    4 you consider the burden to minority voters?    5 MR. MCKENZIE: Again, I'm going to object on    6 deliberative process grounds as to what your    7 considerations were in your analysis.    8 A. I'm going to decline to answer on the advice of    9 counsel.    10 Q. (BY MR. GEAR) Are you aware of any communication    11 in the public record that would show that SB 14 does not    12 have a disproportionate impact on minority voters?    13 MR. MCKENZIE: Same objection to the extent    14 you relied on it in your analysis and is not publically    15 known as to what you factored in your analysis --    16 Q. (BY MR. GEAR) And again --    17 MR. MCKENZIE: -- and on the public record.    18 Q. (BY MR. GEAR) And again, I'm not asking you to    19 speak about the public record.    20 MR. MCKENZIE: Same objection.    21 A. I'm sorry. Could you repeat the question?    22 MR. GEAR: Could you read it back, please.    23 (The requested material was read.)    24 A. I don't recall the evidence that either side used    25 to bolster their case in terms of what study they may have</p>	<p>1 considering SB 14?    2 MR. MCKENZIE: Objection. To the extent    3 it's not public, you may answer. To the extent there's a    4 public statement by the governor that you're aware of    5 about voter fraud, but to the extent that it's a private    6 intra-governor staff communication, I would instruct you    7 not to answer.    8 A. I decline to answer on advice of counsel.    9 Q. (BY MR. GEAR) Are you familiar with what the    10 term "voter fraud" means in the state of Texas?    11 A. It would be good if we put a definition on it.    12 You know, there are, I guess, multiple things that can all    13 go under that heading.    14 Q. Sure. And can you tell me what voter fraud is as    15 defined in the State of Texas election code?    16 A. In the code? I do not recall the exact wording    17 in the election code.    18 Q. Do you recall it being defined anywhere in Texas    19 law?    20 A. I do not recall the definition of "voter fraud"    21 in Texas law.    22 Q. Just generally, what do you understand "voter    23 fraud" to mean when referring it to elections in the State    24 of Texas?    25 A. I refer to it as intentionally either voting when</p>



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<p>1 seem to mean that when they say "voter impersonation."  2 But I'm not sure everything meant the same thing when they  3 used the phrase.  4 Q. (BY MR. GEAR) Did you consider voter fraud  5 during your summary of SB 14?  6 MR. MCKENZIE: Same deliberative process  7 objection.  8 A. I'll decline to answer on advice of counsel.  9 Q. (BY MR. GEAR) Did you consider voter  10 impersonation during your summary of SB 14?  11 MR. MCKENZIE: Same deliberative process  12 objection.  13 A. I'll decline to answer on the advice of counsel.  14 Q. (BY MR. GEAR) Do you know what the purpose of  15 SB 14 is?  16 MR. MCKENZIE: You may answer as to general  17 purpose. Please do not reveal any governor-specific  18 purpose.  19 A. And I don't know what Senator Frasier's purpose  20 was in filing the bill.  21 Q. (BY MR. GEAR) Does SB 14 address the issue of  22 voter fraud?  23 A. I would say it does, in that it requires a voter  24 to demonstrate the -- their identity. So we know that the  25 person who is claiming to vote as John Smith is John</p>	<p>1 A. To my knowledge, the bill wasn't addressed to  2 mail ballots. It was addressed to voting in person and  3 polling places.  4 Q. Did you consider the prevalence of voter  5 impersonation when summarizing SB 14?  6 MR. MCKENZIE: Again, same deliberative  7 process objection.  8 A. I'll decline to answer on the advice of counsel.  9 Q. (BY MR. GEAR) Can you identify, as you sit here  10 today, any cases of voter impersonation in the State of  11 Texas?  12 MR. MCKENZIE: Again to the extent you  13 acquired that knowledge of what you may or may not be able  14 to identify in furtherance of your duties as a governor  15 employee, I instruct you not to answer. To the extent  16 that you have knowledge independent of your service as a  17 governor employee, please answer the question.  18 A. I don't have firsthand independent knowledge.  19 Q. (BY MR. GEAR) Of any cases of voter  20 impersonation in the State of Texas?  21 A. Yes. I don't spend much time inside the polling  22 places on election day.  23 Q. When you say you don't have firsthand knowledge,  24 I'm asking you in your capacity as an employee of the  25 governor's office during the consideration of SB 14, did</p>

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<p>1 I'm not asking you about private records. I'm asking you 2 about what appears in the public.</p> <p>3 Are you aware, whether you were employed by the 4 governor or not, is there any communication on the public 5 record that exists that supports that voter impersonation 6 is a problem in the State of Texas?</p> <p>7 MR. MCKENZIE: And the reason why I'm making 8 the objection is because the public record is very large. 9 Potentially, it could include news articles, it could 10 include statements on the floor, it could include 11 exhibits. It's not at all clear to me from the testimony 12 or the witness today that he relied on all of it. And so 13 to the extent there is a subset of that that he would have 14 to reveal, I think that it would reflect his internal 15 mental impressions and some the advice that he may have 16 given to the governor. So on that basis, I object on 17 deliberative process grounds.</p> <p>18 To the extent that my assumptions are 19 incorrect and that it wasn't part of your services to the 20 governor or that you are aware of the entire universe of 21 public record, you may answer the question. But based on 22 my understanding of what you probably understood, I'm 23 asserting the deliberative process on your behalf as I've 24 been instructed by you and your office.</p> <p>25 THE WITNESS: I don't usually ask for a</p>	<p>1 the governor's office? 2 A. Yes.</p> <p>3 Q. And when you say you saw studies for analysis 4 about voter registration, do you recall what you saw? 5 MR. MCKENZIE: Again, I'm going to object on 6 the deliberative process grounds to the extent you saw 7 that stuff in furtherance of your duties as a governor 8 employee. 9 A. In that case, I'll decline to answer on the 10 advice of counsel. 11 Q. (BY MR. GEAR) Okay. And, again, I want to make 12 sure that I'm limiting this to the public record. Can you 13 tell me what communications, studies, analysis that you're 14 aware of that you actually reviewed that support that 15 voter ID is a problem. And you were concerned about the 16 term "problem." Problem that is documented, that it 17 exists, that there is actual documented knowledge of voter 18 impersonation. 19 MR. MCKENZIE: And it's the same objection, 20 because the question asks what you reviewed. And unless 21 you reviewed everything in the public record that had 22 anything to do with voter fraud, it may reveal a subset of 23 information that you relied upon as being more probative 24 or less probative of voter fraud and may have influenced 25 your decision as to what recommendation you were going to</p>
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	<p>1 break while a question is pending, but I think -- I think 2 it make be helpful to clear this up so I can figure out 3 what it is that's -- so I can answer without waiving a 4 privilege, if I can -- if I can discuss this with counsel 5 for about half a minute. If you don't want me to while a 6 question's pending, I understand. 7 MR. GEAR: I think in this situation, I'd 8 like you to answer that question. 9 THE WITNESS: Okay. 10 Q. (BY MR. GEAR) Are you aware of the existence of 11 any public record that supports that voter impersonation 12 is a problem in the State of Texas? 13 A. And, again -- 14 MR. MCKENZIE: Same objection, but go ahead 15 and say what you were going to say. 16 A. I don't know what you mean by "a problem." I've 17 seen articles and I've seen other things that indicate 18 that there have been problems. There have been problems 19 with voter registration which, of course, leads to voting 20 the ill-gotten registrations, and I've seen other things. 21 As I sit here today, I don't remember what -- what 22 documents or what articles I've seen. But, yes, I have 23 seen some and, yes, we were concerned about voter fraud in 24 the State of Texas. 25 Q. (BY MR. GEAR) And when you say "we," you mean</p> <p>1 make to the governor. 2 Q. (BY MR. GEAR) And let me clarify my question. 3 I'm not asking you if you reviewed everything in 4 the public record. I'm asking you if you reviewed 5 anything that appeared in the public record. 6 MR. MCKENZIE: You may answer a "yes" or 7 "no" question if you reviewed anything in the public 8 record. 9 A. Yes. 10 Q. (BY MR. GEAR) And can you tell me what that was? 11 MR. MCKENZIE: I'm going to object on 12 deliberative process grounds as to what you reviewed. 13 A. As we sit here today, I can't remember the 14 specifics of different articles or anything like that. I 15 just can't recall. 16 Q. (BY MR. GEAR) Now, you stated that the 17 governor's office was concerned about voter fraud. What 18 is the basis of that concern? 19 MR. MCKENZIE: Again, to the extent it 20 reveals internal intra-governor communications and 21 deliberations, I'm going to instruct you not to answer 22 that question. To the extent it's a matter of public 23 record and the governor's talked about and you know that 24 he's talked about it, you may answer the question. 25 A. I'm not sure what he talked publically, so I'll</p>



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<p>1 decline to answer on the advice of counsel.</p> <p>2 Q. (BY MR. GEAR) I'm not sure I understood the</p> <p>3 preface to your assertion.</p> <p>4 A. There was sort of two parts to what he was</p> <p>5 saying, you know, other than what the governor has said</p> <p>6 publicly. And to be honest with you, I don't know what</p> <p>7 the governor said publicly or don't recall. And so with</p> <p>8 respect to our intra-governor's office communications and</p> <p>9 discussions, I would assert the privilege and decline to</p> <p>10 answer on advice of counsel.</p> <p>11 Q. Did the governor's office, you or anyone in the</p> <p>12 governor's office, generate any communication regarding</p> <p>13 voter fraud in the State of Texas?</p> <p>14 MR. MCKENZIE: Again, I'm going to object on</p> <p>15 deliberative process grounds unless that communication was</p> <p>16 sent to the public in the form of a press release or</p> <p>17 something to that effect. To the extent it's</p> <p>18 intra-governor office communications about voter fraud,</p> <p>19 I'm going to instruct you not to answer that question.</p> <p>20 A. And I don't know what was -- I don't remember</p> <p>21 what was publicly issued from the governor's office</p> <p>22 regarding voter fraud.</p> <p>23 Q. (BY MR. GEAR) Did the governor's office meet</p> <p>24 with the Texas Attorney General regarding voter fraud?</p> <p>25 MR. MCKENZIE: I'm going to object on</p>	<p>1 A. I do not recall.</p> <p>2 Q. Do you know if they involved voter impersonation?</p> <p>3 A. I don't recall.</p> <p>4 Q. Do you know if they involved voter fraud, in</p> <p>5 general?</p> <p>6 A. In general, yes.</p> <p>7 Q. Have you ever reviewed any communications</p> <p>8 regarding those prosecutions?</p> <p>9 MR. MCKENZIE: To the extent you reviewed</p> <p>10 them in service of the governor, I will instruct you not</p> <p>11 to answer. To the extent you know that information</p> <p>12 independent of that service, you may answer the question.</p> <p>13 A. I'm sorry. Could you say that again?</p> <p>14 (The requested material was read.)</p> <p>15 A. I believe Representative Aliseda spoke about</p> <p>16 them. Other than that, I don't have any knowledge.</p> <p>17 Q. (BY MR. GEAR) And when you say "spoke about</p> <p>18 them," it appears in the public record?</p> <p>19 A. I believe so. I can't swear to that. I think he</p> <p>20 talked about them on the House floor.</p> <p>21 Q. Do you recall what the subject matter of the</p> <p>22 public record -- what it would reflect?</p> <p>23 A. I believe it would have been in the debate on</p> <p>24 this bill.</p> <p>25 Q. But you don't recall the subject matter of what</p>
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<p>1       Q. (BY MR. GEAR) And I'm just trying to understand  2       your testimony --  3       A. That I recall.  4       Q. I'm just trying to understand your testimony  5       as far as I can regarding the concern of voter fraud in  6       the governor's office. Is there anything on the public  7       record that would identify what the basis of the concern  8       was that the governor had regarding voter fraud?  9            MR. MCKENZIE: Same deliberative process  10          objection.  11          A. I'll decline to answer on advice of counsel.  12          Q. (BY MR. GEAR) On the public record, something  13          that appeared in the public record?  14          MR. MCKENZIE: No, I understand. Same  15          objection. I'm not going to -- well, I will explain it  16          again -- just because the public record is big and what he  17          considers a part of it is small and I think that that  18          subset of information and him defining it would reveal  19          confidential deliberations at the governor's office. So  20          on that basis, I instruct the witness not to answer.  21          Q. (BY MR. GEAR) When you summarized SB 14, did you  22          consider the purpose of the bill?  23          MR. MCKENZIE: Same objection.  24          A. I'll decline to answer on the advice of counsel.  25          Q. (BY MR. GEAR) What is the purpose of SB 14?</p>	<p>161</p> <p>1       designation?  2       A. I don't believe so, no.  3       Q. Can you describe the basic provisions of SB 14?  4       A. The bill requires a voter who's showing up in  5       person at a polling place to provide one of seven forms of  6       photo ID. Failing that, the voter can vote provisionally  7       and provide the necessary documentation within six days.  8       The bill requires that training in this new provision  9       would be made to poll workers and people who were involved  10       in the election. It requires signage and other  11       notification to people. I guess those are the basic  12       provisions.  13       Q. Now, based on your prior testimony during the  14       deposition, you indicated that you were involved in the  15       summary of SB 362. Is that accurate?  16       A. You mean did I draft an analysis in the  17       governor's office on that bill?  18       Q. You completed a summary of SB 362. Is that --  19       A. As part of the analysis, yes.  20       Q. Okay. Do you know why SB 14 removed some of the  21       allowable forms of ID from SB 362, what's the difference  22       between the two?  23       A. Do I know why, or do I know what's the  24       difference?  25       Q. Let me ask that question again.</p>
<p>1       MR. MCKENZIE: You may answer as to general  2       purpose. Please don't reveal internal subjective purposes  3       that the governor's office has.  4       A. I don't know Senator Frasier's purpose  5       specifically behind why he filed SB 14.  6       Q. (BY MR. GEAR) Do you know if the purpose of  7       SB 14, in part, was to deny undocumented or illegal aliens  8       from voting?  9       MR. MCKENZIE: Same objection as to the  10       internal governor purpose. You may answer as to general  11       purpose.  12       A. I don't recall that as a purpose, But I don't  13       remember the entire debate.  14       Q. (BY MR. GEAR) Do you recall during the -- well,  15       let me say that differently.  16       Do you recall any debate that appears in the  17       public record expressing a concern that undocumented or  18       illegal aliens are voting?  19       A. I don't recall it. That doesn't mean it wasn't  20       mentioned in the debate.  21       Q. Did you communicate with Senator Frasier's office  22       about the emergency designation of SB 14?  23       A. No.  24       Q. Were you present during any communications that  25       the governor may have had regarding SB 14 as an emergency</p>	<p>162</p> <p>164</p> <p>1       You had an opportunity to review SB 14; is that  2       correct?  3       A. I didn't review it today, no.  4       Q. I think we marked that as --  5       A. What I have is the -- maybe it's my fault I took  6       you out of order. But we have the legislative history of  7       it.  8       Q. Not a problem.  9       (Discussion off the written record.)  10       MR. MCKENZIE: Would now be a good time to  11       take a break?  12       MR. GEAR: Sure. We can take a break.  13       (Break.)  14       (Exhibit 5 was marked.)  15       Q. (BY MR. GEAR) So I'm handing you what's been  16       previously marked as Exhibit No. 5. Before we went off  17       the record, we were talking about SB 14, and you  18       graciously reminded me that we had not reviewed the actual  19       bill.  20       Can you take a second and look at that? And then  21       we can have a conversation.  22       A. Certainly.  23       (Witness reviews document.)  24       Q. (BY MR. GEAR) Have you had a chance to review  25       Exhibit No. 5?</p>



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1 pursuant to SB 14? 2 MR. MCKENZIE: And again, I'm going to 3 object on deliberative process grounds as to the contents 4 of communications among the governor's staff. 5 A. I'll decline to answer on the advice of counsel. 6 Q. (BY MR. GEAR) Are you aware of any 7 communications with the Secretary of State's office 8 between the governor's office -- you or anyone in the 9 governor's office and the Secretary of State's office 10 regarding allowable forms of ID? 11 MR. MCKENZIE: Same objection to the extent 12 it reveals deliberations of the executive branch of Texas. 13 To the extent it doesn't, you may answer the question. 14 A. I'll decline to answer on the advice of counsel. 15 Q. (BY MR. GEAR) Are you aware of any 16 communications from the governor's office that you were 17 present with the Department of -- or DPS regarding 18 allowable forms of ID? 19 MR. MCKENZIE: Same objection. 20 A. I'll decline to answer on the advice of counsel. 21 Q. (BY MR. GEAR) How would allowing a nonphoto ID 22 enhance the integrity of the ballot box in the State of 23 Texas? 24 A. How would allowing a nonphoto ID enhance the 25 integrity compared to a photo ID?	169 1 A. I decline to answer on advice of counsel. 2 Q. (BY MR. GEAR) During your analysis or summary of 3 SB 14, did you consider either Indiana or Georgia law and 4 the allowable forms of ID that they would allow under 5 their laws? 6 MR. MCKENZIE: Same objection. 7 A. I decline to answer on the advice of counsel. 8 Q. (BY MR. GEAR) What's the purpose of removing 9 from SB 14 the option for a voter to show a valid employee 10 ID, as did SB 362? 11 MR. MCKENZIE: Again you may answer as to 12 publicly stated purposes. Please don't reveal the 13 private purposes of the governor's office. 14 A. I don't know any publicly stated purpose. 15 Q. (BY MR. GEAR) Are you aware of any privately 16 stated purpose? 17 MR. MCKENZIE: You can answer "yes" or "no" 18 if you're aware. 19 A. I don't recall specific policy. I remember my 20 reaction to it. But it was, you know, for the purpose of 21 doing my analysis. 22 Q. (BY MR. GEAR) Okay. What was your reaction to 23 it? 24 MR. MCKENZIE: I'm going to object on the 25 grounds of deliberative process privilege.
1 Q. Strike that question. 2 How would allowing a nonphoto ID -- strike that 3 question. 4 Are you aware that the Indiana photo ID law 5 allows for additional forms of nonphoto -- are you 6 aware -- I'm sorry. Strike that. I'll take a drink of 7 water. 8 Are you aware that the Indiana law allows for 9 nonphoto ID? 10 MR. MCKENZIE: I'm going to object to the 11 extent you acquired that awareness in furtherance of your 12 duties as an analyst for the governor. To the extent you 13 have any independent knowledge that doesn't derive from 14 your experience with the governor's office, you may answer 15 the question. 16 A. I'll decline to answer on the advice of counsel. 17 Q. (BY MR. GEAR) Are you aware that the Indiana law 18 allows -- and I'm referencing their photo ID law -- allows 19 for more allowable forms of ID than the SB 14? 20 MR. MCKENZIE: Same objection. 21 A. I decline to answer on the advice of counsel. 22 Q. (BY MR. GEAR) Are you aware that the Georgia law 23 allows for more allowable forms of ID than the -- than SB 24 14 in the State of Texas? 25 MR. MCKENZIE: Same objection.	170 1 A. I'll decline to answer on the advice of counsel. 2 Q. (BY MR. GEAR) Do you know who would have made 3 that decision? 4 A. No. 5 Q. Are you aware of any communications regarding 6 that decision? 7 A. I don't remember any. 8 Q. Do you know what the circumstances by which the 9 license to carry a concealed handgun were included in 10 SB 14? 11 A. No. 12 Q. Do you know the racial composition of license to 13 carry concealed handgun holders is in the State of Texas? 14 A. No. 15 MR. MCKENZIE: I was going to object to 16 extent that you acquired that knowledge on the basis of 17 serving the governor's office. But you've already 18 answered, so that's fine. 19 Q. (BY MR. GEAR) Are you aware that the individuals 20 in the State of Texas who carry a concealed handgun 21 license are disproportionately white? 22 MR. MCKENZIE: I'm going to object to the 23 extent you acquired any awareness of that fact during your 24 service at the governor's office. To the extent you have 25 awareness of that outside your service of the governor's



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<p>1 office, you may answer the question.  2 A. I'm not aware of any such thing.  3 Q. (BY MR. GEAR) Did you, in your function of  4 creating -- of completing an analysis or a summary of  5 SB 14 consider the demographics of individuals who may  6 hold a concealed handgun license?  7 MR. MCKENZIE: And I'm going to object on  8 the grounds of deliberative process privilege as to what  9 you considered in your analysis.  10 A. I'll decline to answer on the advice of counsel.  11 Q. (BY MR. GEAR) Were you present during any  12 communications while working in the governor's office  13 where legislators were present and discussed their opinion  14 as to whether or not individuals in the State of Texas who  15 carry a concealed handgun license were disproportionately  16 white?  17 A. No.  18 Q. Do you recall any public debate? So is there  19 anything that appears in the public record that would  20 support that individuals who carry a handgun license in  21 the State of Texas are disproportionately white?  22 A. I don't recall that, no.  23 Q. Are you aware or do you know why student IDs were  24 removed from consideration of 362 during the passage of  25 SB 14?</p>	173	<p>1 review it?  2 A. I don't see it in Senate Bill 362, which just may  3 mean that I'm missing it.  4 Q. Well, let me turn your attention to HB 1706,  5 Exhibit 44. Do you see that it is included in the 2005  6 version of photo ID legislation? And I turn your  7 attention to Page 3.  8 A. Again, this is a bill by a different author in a  9 different session. I don't necessarily think it's a  10 continuation of the same bill.  11 Q. Do you see that it was considered in 2005?  12 A. The student identification card issued by a  13 public or private institution was included amongst the ID  14 in House Bill 1706.  15 Q. Do you know why it was not considered in SB 14?  16 MR. MCKENZIE: And again, please don't  17 reveal any intra-governor communications. To the extent  18 you have knowledge outside of your service to the  19 governor's office, you may answer the question.  20 A. I don't remember who removed it or why or...  21 Q. (BY MR. GEAR) Were you involved in any  22 communications where the consideration to remove student  23 IDs was discussed?  24 MR. MCKENZIE: Same objection. To the  25 extent it reveals information you obtained at the</p>	175
<p>1 MR. MCKENZIE: Object. To the extent you  2 acquired that knowledge during your service to the  3 governor's office in furtherance of those duties, I'd ask  4 you not to answer. To the extent you know outside of your  5 service to the governor's office, you may answer.  6 A. I don't know. And, you know, 362 and 14 were  7 different bills. I don't really consider it removing from  8 one to the other. You know, Senate Bill 14 was filed as a  9 new bill. I understand what you're saying, in that there  10 was a bill that was similar in a previous session; but  11 generally folks work on deals between sessions, and  12 they'll come back a little different.  13 Q. (BY MR. GEAR) Fair enough.  14 Student IDs were considered in HB 218, correct?  15 A. I think that is correct.  16 Q. Student IDs were considered in SB 362?  17 A. I'm not certain.  18 Q. And that would have been the 2009 -- you can  19 review the exhibit.  20 A. Student ID was included in 218, House Bill 218.  21 And I'm sorry, what was your next question?  22 Q. 362, same question. And you might as well look  23 at HB 1706, as well.  24 (Witness reviews document.)  25 Q. (BY MR. GEAR) Did you have an opportunity to</p>	174	<p>1 governor's office, I'm going to ask you not to answer the  2 question.  3 A. I'll decline to answer on the advice of counsel.  4 Q. (BY MR. GEAR) Did you conduct any research on  5 the removal of nonphoto ID from consideration on SB 14?  6 MR. MCKENZIE: Same objection on  7 deliberative process grounds as to what research you did.  8 A. I don't recall doing any research, but I also  9 don't recall if the bill as filed had that in it or not.  10 Q. (BY MR. GEAR) Are you aware of anything that  11 changed between 2009 and 2011 that would have made the  12 identification -- student identification less reliable  13 at -- while voting?  14 MR. MCKENZIE: Again, I would ask you not to  15 answer that question to the extent you acquired knowledge  16 as to the reliability of student IDs in the course of your  17 service as an employee of the governor. To the extent you  18 have independent knowledge, you may answer the question.  19 A. I don't have any independent knowledge. I don't  20 recall.  21 Q. (BY MR. GEAR) Were you involved in any  22 communications where the concern was expressed that  23 removing student IDs from consideration in SB 14 would  24 have a disproportionate impact on minority voters.  25 MR. MCKENZIE: To the extent those</p>	176



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1 communications were in the governor's office or among 2 governor staff, I'm going to instruct you not to answer 3 that question. 4 MR. GEAR: And the question is, were you 5 involved in any communications. 6 MR. MCKENZIE: Yes. And I'm still going to 7 lodge the objection. 8 A. I don't recall any communications. 9 Q. (BY MR. GEAR) Do you recall any communications 10 that appear in the public record where the concern was 11 expressed that the removal of student IDs from SB 14 would 12 have a disproportionate impact on minority voters? 13 MR. MCKENZIE: Same objection to the extent 14 that you pulled information from the public record and 15 relied on it in your analysis. 16 A. And, again, I don't agree with the 17 characterization of removing it from Senate Bill 14. It 18 was never in Senate Bill 14. I'm not sure that it was 19 ever removed from the bill. 20 Q. (BY MR. GEAR) Are you familiar with the current 21 law in the State of Texas regarding allowable forms of ID? 22 A. I am familiar, but I don't know all of them. I 23 have to look it up myself whenever I have to look at it. 24 Q. Can you describe for me what's allowed under the 25 current law regarding photo ID?	177 1 communications between the governor and staff or 2 legislative communications, to extent they're not public. 3 A. I don't remember. I think it was an amendment on 4 the Senate floor, but I don't remember for sure. 5 Q. (BY MR. GEAR) Do you recall who raised the 6 amendment or made the amendment -- 7 A. No. 8 Q. -- proposed the amendment? 9 A. But if I'm correct on that, it will be on the... 10 Q. Okay. Do you know what the purpose of this 11 amendment was to include disabilities as an exception in 12 SB 14? 13 A. No. 14 Q. Do you recall if there were any communications in 15 the governor's office regarding the exception for 16 disabilities pursuant to SB 14? 17 MR. MCKENZIE: Again, I'm going to object to 18 the extent answering that question would reveal the 19 subject matter of internal governor office communications. 20 A. I'll decline to answer on the advice of counsel. 21 Q. (BY MR. GEAR) How did the exception for 22 individuals with religious objects to being photographed 23 come into -- to be included in SB 14? 24 A. I don't know. I don't recall. 25 Q. Do you know what the purpose of that inclusion	179
1 A. I can't, because I always look it up myself. 2 Q. Does it allow for nonphoto ID? 3 A. Yes. Most voters vote with their voter 4 registration certificate. 5 Q. Okay. So the current law allows for a voter to 6 use a voter registration certificate, correct? 7 A. Yes. 8 Q. And that's a nonphoto ID? 9 A. Yes. 10 Q. And the current law allows for voters to use 11 forms of utility bills that display their 12 identification -- 13 A. Yes. 14 Q. -- and their address, correct? 15 A. That the local legislature was seeking to change 16 by passing this bill. 17 Q. Okay. And the current law as we're discussing it 18 would thereby allow a voter to use a student ID. Would 19 you agree with that? 20 A. I don't remember. As I said, I look it up every 21 time I have to deal with it. There's a lot of different 22 forms of ID currently. 23 Q. How did the exception for individuals with 24 disabilities come to be included in SB 14? 25 MR. MCKENZIE: Please don't reveal any	178 1 was? 2 A. I don't. 3 MR. MCKENZIE: Same objection. Go ahead. 4 Q. (BY MR. GEAR) Do you know how it -- how the 5 discussion or the purpose -- I'm sorry, strike that. 6 Do you know how that issue arose? 7 A. I do not recall. 8 Q. Do you know what concerns, if any, that the 9 exception to religious objections was included into SB 14? 10 A. I'm sorry. Could you repeat that? 11 MR. MCKENZIE: Objection; vague. 12 Q. (BY MR. GEAR) Are you aware of any -- are you 13 aware of whether or not the exception for individuals with 14 religious objections to being photographed was included 15 into SB 14 in response to any specific concerns? 16 A. I don't recall that. 17 Q. Can you describe the election identification 18 certificate provision of SB 14? 19 A. Yes. Currently the Department of Public Safety 20 issues driver's licenses. They also issue identification 21 cards to people who for whatever reason don't have a 22 driver's license but want to have a identification card. 23 And this was a card to be issued for people who just 24 wanted to vote. And if I recall in the final version of 25 the bill, they're not allowed to use it for any other	180



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<p>1 purpose.</p> <p>2 Q. Do you know how that portion of the SB 14 was</p> <p>3 developed?</p> <p>4 A. Yes.</p> <p>5 Q. What was the purpose of including the election</p> <p>6 identification certificate into SB 14?</p> <p>7 MR. MCKENZIE: I'm going to object to the</p> <p>8 extent it reveals private governor purposes. To the</p> <p>9 extent that it's a matter of public record, you may answer</p> <p>10 the question.</p> <p>11 A. I have to decline on the advice of counsel.</p> <p>12 Q. (BY MR. GEAR) What, if anything, was it modeled</p> <p>13 on? Or did it follow any other previous legislation or</p> <p>14 legislation from other states?</p> <p>15 MR. MCKENZIE: Same objection. To the</p> <p>16 extent you acquired that knowledge during your service at</p> <p>17 the governor's office.</p> <p>18 I'll decline to answer on the advice of counsel.</p> <p>19 Q. (BY MR. GEAR) Would the governor know --</p> <p>20 A. I'm fairly --</p> <p>21 MR. MCKENZIE: Wait. Is that the end of the</p> <p>22 question? I meant to object.</p> <p>23 MR. GEAR: I was in the middle of thinking,</p> <p>24 but...</p> <p>25 MR. MCKENZIE: Okay.</p>	<p>181</p> <p>1 A. I don't recall a particular objection to the</p> <p>2 election identification certificate as opposed to in</p> <p>3 general. We discussed earlier about -- I remember a</p> <p>4 debate on the floor about how it was difficult to go</p> <p>5 downtown or something. I don't remember anybody</p> <p>6 specifically talking about the election identification</p> <p>7 certificate.</p> <p>8 Q. (BY MR. GEAR) Well, you talked about the debate</p> <p>9 on the public floor. Can you tell me what that debate --</p> <p>10 the substance of that debate?</p> <p>11 A. If I remember correctly -- and my memory is</p> <p>12 suspect -- I think Senator Ureste talked about how his</p> <p>13 district is very large. He compared it to some other</p> <p>14 large geographic area and said it was difficult to get</p> <p>15 downtown.</p> <p>16 Q. He talked about the distance his constituents</p> <p>17 would have to travel?</p> <p>18 A. I believe that's correct.</p> <p>19 Q. And do you recall testimony regarding some</p> <p>20 constituents would have to travel as far as a hundred</p> <p>21 miles?</p> <p>22 A. I don't remember the specific testimony. I'm</p> <p>23 sure it's all on the record.</p> <p>24 Q. Do you know if every county in the State of Texas</p> <p>25 has a driver's license office?</p>
<p>1 THE WITNESS: When we come to a natural</p> <p>2 stopping point, I'd like to ask my lawyer like a 30-second</p> <p>3 question to make sure I know something, whenever --</p> <p>4 MR. GEAR: I think this is a good time to do</p> <p>5 it.</p> <p>6 THE WITNESS: Okay.</p> <p>7 (Break.)</p> <p>8 Q. (BY MR. GEAR) Regarding the identification</p> <p>9 certificate provision, are you aware of any concerns that</p> <p>10 the -- that were expressed that the election</p> <p>11 identification certificate would be difficult for</p> <p>12 constituents in the State of Texas or residents in the</p> <p>13 State of Texas to obtain?</p> <p>14 MR. MCKENZIE: I'm going to object to the</p> <p>15 extent you acquired that awareness in service of the</p> <p>16 governor and as part of your analysis. If you have</p> <p>17 independent awareness, you may answer the question.</p> <p>18 MR. GEAR: And so I don't have to restate</p> <p>19 the question, I want to make sure that you understand I'm</p> <p>20 limiting it to the public record. Are you aware of any</p> <p>21 concerns that were expressed.</p> <p>22 MR. MCKENZIE: And the same objection to the</p> <p>23 extent that you surveyed the public record and decided to</p> <p>24 focus on a certain piece of it in order to give analysis</p> <p>25 to the governor.</p>	<p>182</p> <p>184</p> <p>1 MR. MCKENZIE: And again, I object to the</p> <p>2 extent you acquired knowledge or not about that during</p> <p>3 your service as a member of the governor's office staff.</p> <p>4 To the extent you have independent knowledge about that,</p> <p>5 please answer the question.</p> <p>6 Q. (BY MR. GEAR) And this doesn't have to be tied</p> <p>7 to any voter ID legislation. I'm just asking you, do you</p> <p>8 know, does every county in the state have a driver's</p> <p>9 license office?</p> <p>10 MR. MCKENZIE: Same objection to the extent</p> <p>11 you acquired it trying to analyze legislation. If you</p> <p>12 have other knowledge, then --</p> <p>13 A. I don't have other knowledge. I guess I have to</p> <p>14 decline to answer on the advice of counsel.</p> <p>15 Q. (BY MR. GEAR) Would you agree that there are</p> <p>16 some residents in the State of Texas who would have to</p> <p>17 travel a hundred miles or more to get to a functional</p> <p>18 driver's license office?</p> <p>19 MR. MCKENZIE: Objection; speculation. But</p> <p>20 you may answer.</p> <p>21 A. I don't have knowledge of that.</p> <p>22 Q. (BY MR. GEAR) Is there a public</p> <p>23 transportation -- strike that.</p> <p>24 Is there public transportation to all driver's</p> <p>25 license offices in the State of Texas?</p>



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1 A. I -- 2 MR. MCKENZIE: Objection on speculation 3 grounds. To the extent -- you may answer. 4 A. I don't know. 5 Q. (BY MR. GEAR) Do you know generally what the 6 waiting time would be in the driver's license office to 7 obtain a driver's license or a State-issued ID?	1 Q. But as you sit here today, you don't know what 2 those underlying documents are? 3 A. That's correct. I don't recall. 4 Q. Did you consider the underlying documents that 5 have to be presented to obtain an election identification 6 certificate during your analysis of SB 14?
8 A. I don't recall. I know I've done it. I just 9 don't remember long I waited. 10 Q. Do you have a driver's license? 11 A. I do. 12 Q. How did you obtain your driver's license? 13 A. I don't remember if I renewed via mail or if I 14 had to go to an office and -- I just don't remember how 15 I... 16 I assume you mean the most recent time I did it? 17 Q. The most recent time. 18 A. Yeah, I really don't remember doing it. 19 Q. And what county do you live in? 20 A. Harris County. 21 Q. Harris County. 22 And is there a driver's license office in Harris 23 County? 24 A. Yes. 25 Q. How far away is that from your home?	7 MR. MCKENZIE: Object on deliberative 8 process grounds as to what you considered in your 9 analysis. 10 A. I have to decline to answer on the advice of 11 counsel. 12 Q. (BY MR. GEAR) Are you aware of any communication 13 that appears in the public record that would identify what 14 those underlying documents may be? 15 MR. MCKENZIE: And to the extent you 16 acquired that knowledge as part of your analysis by 17 selecting pieces of the public record, I'm going to 18 instruct you not to answer. 19 Q. (BY MR. GEAR) And again, the public record 20 includes debate on the floor. 21 MR. MCKENZIE: Same objection. 22 A. I do not recall what the -- and I don't recall 23 whether it was in the bill or whether it was a DPS rule 24 thereafter. I just don't remember. 25 Q. (BY MR. GEAR) During the drafting process or the
1 A. I probably didn't go to the closest one. So 2 the -- I'm not sure how far the closest one is from my 3 house. I probably went to one off of 290, which isn't 4 near my house. 5 Q. Do you recall what documentation, if any, you had 6 to take to obtain or renew your driver's license? 7 A. I don't. But it's in the law. I don't remember 8 what I had to do. 9 Q. Would you agree that there is an underlying 10 requirement for a registered -- before a registered voter 11 could obtain an election identification certificate, that 12 they would have to present some form of identification to 13 obtain that? 14 A. I don't remember exactly what ended up in the 15 provision, and I don't remember what DPS, to the extent 16 that they did any rule-making on that. So I don't recall 17 what you had to demonstrate in order to get the 18 certificate. And I don't know what you have to 19 demonstrate to get the DPS ID, which current law allows, 20 which may be the same thing. 21 Q. As you sit here today, are you aware of any 22 requirements to present underlying documents to obtain an 23 election identification certificate? 24 A. I know you have to present. I forget, if I knew, 25 what ended up being the requirement.	186 1 legislature's consideration of SB 14, was there an 2 analysis of costs or steps a voter would need to take to 3 obtain an election identification certificate? 4 MR. MCKENZIE: I'm going to object to the 5 extent that analysis was performed inside the governor's 6 office. 7 A. I don't recall. I'm not sure that I knew. 8 Q. (BY MR. GEAR) Are you aware of any analysis that 9 exists in the public record regarding that? 10 A. I don't recall. 11 Q. If the underlying documents required to obtain an 12 election identification certificate are not free, would 13 you agree that the election certificate itself would not 14 be free? 15 A. I don't think so, no. 16 Q. Let me clarify, because I see confusion. 17 If you had to pay for the underlying documents, 18 if you didn't have them in your possession, custody or 19 control or you just simply lost them and you had to pay 20 for those, would you agree that there's a cost to the 21 underlying documents? 22 A. No. I mean, if I lost my birth certificate, 23 which I did, and had to go get a new one, that doesn't 24 mean that whatever I got it for cost money; it was -- I 25 had lost the certificate, and I had to go get a new birth



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<p>1 certificate. So, no, I don't bootstrap those together  2 and say that that means the certificate costs money.  3 Q. Okay. And so do you know how much it costs to  4 obtain a certified copy of a birth certificate in the  5 State of Texas?  6 A. I don't. I was born in New Jersey.  7 Q. Okay. So you would have to go to New Jersey?  8 A. I had to go to New Jersey. And I only did it a  9 couple of months ago, and I don't remember what it cost.  10 Q. Do you know how you would obtain a certified copy  11 of a birth certificate from New Jersey? I understand you  12 just said you did it.  13 A. I do. You call them up and you order it and send  14 them a certified check.  15 Q. Do you know how long that takes?  16 A. It took about -- and I don't know the exact. It  17 took maybe a week, maybe 10 days. I don't think it was  18 that long. I was actually quite surprised.  19 Q. As to how long it took?  20 A. No. How short a time it took. I grew up in New  21 Jersey.  22 Q. A week to 10 days?  23 A. (Witness nods head.)  24 Q. Do you remember the cost?  25 A. I don't. I may still have the information</p>	189	<p>1 if you don't know where one can obtain a election  2 identification certificate, you also would not know the  3 hours in which they could actually obtain the election  4 identification certificate?  5 A. I know it was contemplated that you would get  6 them the same places that you obtained driver's licenses  7 and DPS cards and during the same hours. I live in a  8 populous county, so I'm sort of more familiar with that  9 than I am with the way other counties operate.  10 Q. Does SB 14 require employers to provide paid  11 leave to obtain a driver's license or an ID?  12 A. Not that I'm aware of.  13 Q. I asked you before would you agree if some  14 residents in the State of Texas would have to travel a  15 hundred miles or more to obtain a State-issued driver's  16 license or ID, would you agree that there are some  17 residents in the State of Texas that would have to travel  18 at least 50 miles?  19 MR. MCKENZIE: I'm going to object on  20 speculation grounds and also to the extent you reached an  21 opinion on that during your services as the governor's  22 employee. If you have an opinion separate from that  23 service, you may answer the question.  24 A. Yeah. I'm not the right person to ask. I don't  25 know how far people have to travel.</p>	191
<p>1 somewhere, but I don't recall as we sit here.  2 Q. But it was not free?  3 A. It was not free. It was inexpensive enough that  4 I ordered three of them.  5 Q. Well, would you agree that there are residents in  6 the State of Texas who live below the poverty line that  7 may not be able to order three certified copies of their  8 birth certificate?  9 MR. MCKENZIE: Object on speculation  10 grounds. You may answer.  11 A. I would think you wouldn't need three. I just  12 did it as -- if I lost it once, I figured you could lose  13 it again.  14 Q. (BY MR. GEAR) Where can one obtain an election  15 identification certificate?  16 A. I don't know. I don't know if it specifies in  17 the bill, and I don't know if DPS came out with the rules  18 on where they would be available.  19 Q. Did you consider that during your analysis of  20 SB 14?  21 MR. MCKENZIE: Objection on deliberative  22 process grounds.  23 A. I decline to answer on the grounds -- or on the  24 advice of counsel.  25 Q. (BY MR. GEAR) So it would stand to reason that</p>	190	<p>1 Q. (BY MR. GEAR) Are you aware of public debate  2 that express concerns that minority voters are less likely  3 to have the allowable form of idea under SB 14?  4 MR. MCKENZIE: I'm going to object to the  5 extent that that awareness played a factor in your  6 analysis. To the extent you have independent awareness,  7 you may answer the question.  8 Q. (BY MR. GEAR) And again, I want to make sure you  9 understand what my question is here.  10 Are you aware of any record that appears in the  11 public record or any communication that appears in the  12 public record. So I'm limiting that question specifically  13 to the public record.  14 A. Could you give me the whole question again or  15 have it read back, either way.  16 (The requested material was read.)  17 (Discussion off the record.)  18 Q. (BY MR. GEAR) Let me just re-ask the question.  19 Are you aware of -- and again, I'm limiting my  20 question to public record, communications, documents that  21 appear in the public record. Are you aware of any  22 communications or documents or analysis that show that  23 there was a consideration as to whether or not minority  24 voters were less likely to possess the forms of allowable  25 identification under SB 14?</p>	192



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<p>1 MR. MCKENZIE: Same objection.</p> <p>2 A. I believe that was an argument made on the floor</p> <p>3 by opponents of the bill. I don't know of any statistical</p> <p>4 data or anything like that.</p> <p>5 Q. (BY MR. GEAR) Did you consider those concerns</p> <p>6 during your analysis of SB 14?</p> <p>7 MR. MCKENZIE: I'm going to object on</p> <p>8 deliberative process grounds.</p> <p>9 A. I decline to answer on the advice of counsel.</p> <p>10 Q. (BY MR. GEAR) Are you aware of anyone who</p> <p>11 supported SB 14 that considered the concerns expressed by</p> <p>12 the opponents regarding that issue?</p> <p>13 MR. MCKENZIE: Same objection to the extent</p> <p>14 you acquired that knowledge in service at the governor's</p> <p>15 office.</p> <p>16 A. I decline to answer on the advice of counsel.</p> <p>17 Q. (BY MR. GEAR) Was any part of the purpose of</p> <p>18 SB 14 to decrease the number of Hispanic voters?</p> <p>19 MR. MCKENZIE: You may answer as a general</p> <p>20 purpose. Please do not answer as to any private purposes</p> <p>21 the governor may or may not have had.</p> <p>22 A. Not that I know of.</p> <p>23 Q. (BY MR. GEAR) Was any part of the purpose of</p> <p>24 SB 14 to decrease the number of any other group of</p> <p>25 minority voters?</p>	193	<p>1 A. My understanding of the purpose of the bill was</p> <p>2 to make sure that people who were voting were entitled to</p> <p>3 vote, and I don't think that that necessarily has to favor</p> <p>4 one party or the other.</p> <p>5 Q. (BY MR. GEAR) Do you have a concern that SB 14</p> <p>6 will disproportionately impact minority voters?</p> <p>7 MR. MCKENZIE: Object to the extent you</p> <p>8 developed a concern in the course of your services as a</p> <p>9 governor employee. To the extent you don't have a concern</p> <p>10 in that capacity, you may answer the question.</p> <p>11 A. No.</p> <p>12 Q. (BY MR. GEAR) Do you have a concern that SB 14</p> <p>13 will have a discriminatory effect on minority voters?</p> <p>14 MR. MCKENZIE: Same objection.</p> <p>15 A. No.</p> <p>16 Q. (BY MR. GEAR) Do you recall any debate on the</p> <p>17 public record that expressed that in part SB 14 was</p> <p>18 designed to prevent illegal aliens or undocumented</p> <p>19 citizens, noncitizens from voting?</p> <p>20 A. I don't recall that. But the debate's on the</p> <p>21 public record.</p> <p>22 Q. Do you recall the lieutenant governor or anyone</p> <p>23 from the lieutenant governor expressing -- governor's</p> <p>24 office expressing that concern?</p> <p>25 A. I don't.</p>	195
<p>1 A. Not that I know of.</p> <p>2 Q. Was any part of the purpose of SB 14 for partisan</p> <p>3 purposes?</p> <p>4 A. I don't --</p> <p>5 MR. MCKENZIE: Same objection. To the</p> <p>6 extent it reveals publicly expressed purposes, you may</p> <p>7 answer. To the extent it's private purposes of the</p> <p>8 governor's office, I'd instruct you not to answer.</p> <p>9 A. I don't understand the question.</p> <p>10 Q. (BY MR. GEAR) Political purposes? If I -- let</p> <p>11 me just ask the question again.</p> <p>12 Was any part of SB 14 -- any part of the purpose</p> <p>13 of SB 14 for political purposes?</p> <p>14 MR. MCKENZIE: Same objection.</p> <p>15 A. I really can't get into the minds of legislators</p> <p>16 to know what their purpose is. I'm sure most bills, they</p> <p>17 have some hope that it will help make them popular back</p> <p>18 home. But I don't really know.</p> <p>19 Q. (BY MR. GEAR) Was any part of the purpose of</p> <p>20 SB 14 to depress the Democratic participation in elections</p> <p>21 to further the political interests of Republican</p> <p>22 candidates?</p> <p>23 MR. MCKENZIE: Same objection.</p> <p>24 A. I'm sorry. Could you repeat the question.</p> <p>25 (The requested material was read.)</p>	194	<p>1 Q. Based on your review and analysis of SB 14, was</p> <p>2 SB 14 designed to address any specific problem in the</p> <p>3 State of Texas?</p> <p>4 MR. MCKENZIE: I'm going to tell you not to</p> <p>5 answer to the extent that will reveal your review or</p> <p>6 analysis of SB 14.</p> <p>7 A. How could it not? I decline to answer on the</p> <p>8 advice of counsel.</p> <p>9 Q. (BY MR. GEAR) Does SB 14 address any specific</p> <p>10 problem in the State of Texas?</p> <p>11 MR. MCKENZIE: Same objection to the extent</p> <p>12 your opinion on that derives from the analysis and review</p> <p>13 you did as an employee of the governor's office.</p> <p>14 A. SB 14 was designed to help ensure that the voters</p> <p>15 who are eligible to vote are able to vote and their vote</p> <p>16 doesn't get offset by all types of voter fraud that we</p> <p>17 talked about earlier. So to the extent that SB 14</p> <p>18 addresses the problem, that's the problem it's intended to</p> <p>19 address. I think it's designed primarily to ensure fair</p> <p>20 elections and to make sure that we know that the people</p> <p>21 voting are entitled to do so.</p> <p>22 Q. (BY MR. GEAR) But as you sit here today, you're</p> <p>23 unable to identify any cases of voter impersonation in the</p> <p>24 State of Texas; is that correct?</p> <p>25 A. That's right.</p>	196



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<p>1 Q. And as you sit here today, you're unable to  2 identify any specific allegations by mail voter fraud in  3 the State of Texas; is that correct?  4 A. Mail voter fraud?  5 Q. By mail voter fraud, correct.  6 A. I don't know about specific cases. There's been  7 a lot written on mail voter fraud. And we had a bill that  8 passed the legislature in 2003 addressing it. And there's  9 still been newspaper articles and all kinds of stuff about  10 mail voter fraud.  11 Q. Would you agree that voter impersonation in the  12 State of Texas is rare?  13 A. No.  14 Q. And What are you basing that on?  15 A. We had testimony in the elections committee on a  16 number of applications for -- to register to vote that  17 were fraudulent or for nonexistent people. And I can't  18 see a motive for registering nonexistent people unless you  19 intend to vote them.  20 Q. Well, let's talk about this testimony. You said  21 there was testimony in the elections committee, correct?  22 A. (Witness nods head.)  23 Q. Do you know when that testimony took place?  24 A. I think in 2005 and 2007 and maybe 2009.  25 Q. All right. And let's talk specifically about</p>	<p>197</p> <p>1 Q. What does that mean?  2 A. Filling out an application in the name of  3 somebody who doesn't exist or doesn't live at that  4 address, you know, just with a name. There apparently  5 were quite a few of them.  6 Q. Okay. And so you indicated that SB 14 addresses  7 the issue of voter impersonation, correct?  8 A. It does in that respect. I think it more  9 addresses just ensuring that we have -- that we know who's  10 voting because they show a photo ID. And that way, I know  11 that my vote hasn't been offset by somebody who isn't  12 entitled to vote or is voting in a false name.  13 Q. Are you aware of any cases where a legitimate  14 voter's vote has not been counted as a result of voter  15 impersonation?  16 A. Every time there's a voter impersonation.  17 Q. Are you aware of any cases of voter  18 impersonation?  19 A. It's impossible to catch, virtually. That's why  20 there's so few prosecutions. As I say, we -- there are  21 records of tens of thousands of applications that are  22 incorrect or that are false. How many of those are  23 maliciously so, I couldn't tell you.  24 But to the extent that anybody files a false  25 voter registration application and then votes it, they</p>	<p>199</p>
<p>1 2005. Do you recall who the chair of the elections  2 committee was at that point?  3 A. I usually get my years mixed up. I don't know  4 if -- 2003 was Mary Denny, right? I think 2005 may have  5 been Leo Berman.  6 Q. Okay. And so in --  7 A. That --  8 Q. I'm sorry.  9 A. Let me make sure I got that right. The last  10 session, 2011, was Larry Taylor. I believe Todd Smith was  11 '9. So Leo Berman must have been '7. I think Mary Denny  12 may have been chair in 2005. I don't -- I'm getting my  13 sessions confused.  14 Q. Okay. That's understandable.  15 What was the testimony in 2005, as you recall it?  16 A. I don't recall specifically, but it's all on the  17 record. There were -- and I don't remember which was in  18 what session. But there were -- as I recall, there was  19 testimony regarding that in the House and maybe in the  20 Senate. I tend to follow the House closer.  21 Q. And the subject matter of that testimony?  22 A. Regarded mail -- excuse me -- regarded  23 applications for voter registrations.  24 Q. And you said "nonexistent individuals"?</p>	<p>198</p> <p>1 offset the vote of somebody who voted the other way.  2 Q. So we're focusing on 2005 right now. Are you  3 aware of anyone who filed a false voter registration  4 application and voted?  5 MR. MCKENZIE: And to the extent you  6 developed awareness in the course of your service in the  7 governor's office, I would object on deliberative process  8 grounds.  9 A. As I say, most of what I learned, I learned  10 through the House hearings.  11 Q. (BY MR. GEAR) Okay. And during the House  12 hearings, was there any documented case of a person who  13 filed a false voter registration application and voted?  14 MR. MCKENZIE: Same objection.  15 A. Yeah. I'd have to go back and look at the  16 testimony.  17 Q. (BY MR. GEAR) So as you sit here today, are you  18 aware of any voter in 2005 who filed a false voter  19 registration application and voted?  20 A. I --  21 Q. As you sit here today.  22 MR. MCKENZIE: And to the extent you  23 acquired that knowledge in the course of your service as  24 the governor's employee, I would instruct you not to  25 answer. To the extent that you have that knowledge based</p>	<p>200</p>



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<p>1 upon the service not in the governor's office, then you  2 may answer the question.  3 A. As we sit here today, I cannot name the -- I  4 assume you mean the name of the applicant or the person,  5 either one. I could not tell you the names of anybody.  6 Q. (BY MR. GEAR) And just to expand on that, are  7 you aware of any documented cases, whether you know the  8 name of the applicants or not, where an applicant filed a  9 false voter registration application and voted?  10 A. I don't know -- we separate our applications from  11 our conduct of elections in two different offices in most  12 counties. So the folks who came to testify were the  13 registration people, typically in the Texas tax assessor-  14 collector's office. They don't handle the conduct of  15 election day activities. So who voted and who registered  16 at their office, That's not something they would have in  17 their -- so when they came to testify, I don't recall  18 whether they -- whether they traced one all the way  19 through and said, "This was an application for Joe Smith;  20 and then on election day or in early voting, Joe Smith was  21 voted." I don't know about that.  22 Q. And would that be the same answer for 2007, 2009  23 and 2011?  24 A. Yes. With the exception of the cases that  25 Representative Aliseda referred to having prosecuted, I</p>	<p>201</p> <p>1 half of the 2012 cycle, did any voter ever approach you  2 and indicate that they did not vote because they were  3 concerned about voter fraud cancelling out their vote?  4 A. No. I don't think the concern was people not  5 voting because they thought their vote would be canceled.  6 I think the concern was that their vote gets canceled out.  7 Q. And are you -- strike that.  8 A. That wouldn't necessarily lead to any action on  9 any part of that particular voter or, in the case of your  10 question, inaction.  11 Q. Are you done with that answer?  12 A. Yes, sir.  13 Q. Under SB 14 are you aware of the provisional  14 ballot provisions?  15 A. Yes.  16 Q. And can you describe what the provisions are?  17 A. Basically a voter who fails to present the  18 appropriate ID has six days to go to the voter registrar  19 and provide ID so that their provisional vote will be  20 counted. There are other reasons for provisional votes,  21 but that's the voter ID provision.  22 Q. Do you have any knowledge of how often  23 provisional ballots are counted in the State of Texas?  24 MR. MCKENZIE: To the extent you acquired  25 that knowledge in the service of the governor, I instruct</p>	<p>203</p>
<p>1 don't know specifically myself of individual cases.  2 Q. Are you aware of any individual cases of voter  3 impersonation that appear on the public record in the  4 State of Texas that were discussed during SB 14?  5 MR. MCKENZIE: Same objection as to your  6 awareness -- to the extent your awareness played a role in  7 your analysis.  8 Q. (BY MR. GEAR) Again, I'm asking are you aware of  9 any that appear on the public record.  10 A. Other than the ones that Representative Aliseda  11 referred to, I'm not aware of specific cases.  12 Q. Have you ever heard about a voter who did not  13 vote because they were concerned that voter fraud would  14 cancel out their vote?  15 MR. MCKENZIE: Same objection to the extent  16 you acquired stories of that nature during your service as  17 a governor employee.  18 A. I don't recall any specific stories.  19 Q. (BY MR. GEAR) At some point, you campaigned for  20 the House; is that correct?  21 A. That's correct.  22 Q. And what year was that? Could you remind me?  23 A. It happened twice. In the 2006 election cycle  24 and then for half of the 2012 election cycle.  25 Q. Okay. So during any time during 2006 and for</p>	<p>202</p> <p>1 you not to answer.  2 Q. (BY MR. GEAR) Let me limit that to your  3 knowledge as a candidate for the House, do you have any  4 knowledge, did you acquire any knowledge about how often  5 provisional ballots are counted?  6 A. Not in connection with my being a candidate. I  7 will say that we have not -- this provision obviously has  8 not gone into effect yet so there has been no instance yet  9 of these kind of provisional ballots for this reason where  10 all you have to is go down and show appropriate ID. There  11 are some things that aren't fixable.  12 For example, when I voted one -- one year and the  13 lady in front of me said, "My mom couldn't get her flight  14 home to vote. Can she vote here?" And I said, "She can  15 vote here, but it's going to be provisional and the  16 chances of it counting are very low because she's not  17 registered in this precinct."  18 That isn't fixable. If you don't present the  19 appropriate ID -- and I'm sure I've shown up without my  20 driver's license, although how I would have driven there  21 without one is questionable, but that's fixable. So I  22 would anticipate a much higher percentage of provisional  23 ballots would be accepted because you wouldn't cast one, I  24 wouldn't think, unless you go and demonstrate your photo  25 ID, unless you're trying to make a point or something.</p>	<p>204</p>



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205 1       So if you showed up and you realized you didn't 2 have a photo ID, you cast your provisional ballot, you 3 would be able to go and demonstrate that you have a photo 4 ID, because you have one. But again, that's conjecture. 5 I don't mean to -- 6       Q. Sure. 7       A. So I think it's different from current 8 provisional IDs, which is what I'm getting at. I would 9 think it would be a higher percentage than current 10 provisional ones because most or many current provisional 11 ballots are uncurable. 12       Q. Which means they're not counted? 13       A. In the end if it doesn't comply with whatever the 14 provisions, it can't be counted. 15       Q. Just stepping outside of SB 14 and even stepping 16 outside of voter ID legislation altogether, do you have 17 any knowledge of how often provisional ballots are counted 18 in the State of Texas? 19       A. I don't. I couldn't give you that percentage. 20       Q. Would it be fair to say that provisional ballots 21 are more often not counted than counted during elections 22 in the State of Texas? 23       MR. MCKENZIE: Objection; speculation and 24 asked and answered. But you may answer. 25       A. I don't know the percentage.	207 1 voter turnout? 2       MR. MCKENZIE: To the extent you developed 3 an opinion on that during the course of your service as a 4 governor employee I instruct you not to answer. 5       A. I decline to answer on the advice of counsel. 6       Q. (BY MR. GEAR) Did the governor or any of his 7 staff play any role in developing a strategy to ensure 8 sure that SB 14 would pass? 9       MR. MCKENZIE: I'm going to object. The 10 deliberative process grounds, as the internal strategy of 11 the governor's office. 12       A. I decline to answer on the advice of counsel. 13       MR. MCKENZIE: Objection to the extent that 14 that question would cause you to reveal the internal 15 strategy of the governor's office. 16       Q. (BY MR. GEAR) Were you present during any 17 meetings with, communications with legislators where a 18 strategy was discussed to pass SB 14? 19       MR. MCKENZIE: Again, I'm going to object on 20 the grounds of legislative privilege. To the extent that 21 legislators were communicating with the governor's office 22 about a strategy on passing SB 14. 23       Q. (BY MR. GEAR) It's a yes or no answer. 24       MR. MCKENZIE: Same objection. 25       MR. GEAR: Are you directing him not to
206 1       Q. (BY MR. GEAR) During your analysis of SB 14, did 2 you attempt to determine the percentage of how often 3 provisional ballots are counted in the State of Texas? 4       MR. MCKENZIE: Objection on deliberative 5 process grounds. I instruct you not to answer. 6       A. I will decline to answer due to the advice of 7 counsel. 8       Q. (BY MR. GEAR) You made a comment about you don't 9 know how someone could get to the polling place without 10 actually having their ID -- 11       A. No, how I would, because I drive. 12       Q. And my question is, you are aware, of course, 13 that there are individuals in the State of Texas who do 14 not have a driver's license? 15       A. I am aware of that. 16       Q. And are you aware that minorities in the State of 17 Texas are less likely to have a driver's license than 18 Anglos? 19       MR. MCKENZIE: I'm going to object to the 20 extent you developed any awareness on that subject during 21 your service as a governor employee. Whether or not you 22 were aware speaks to what was on your mind at the time you 23 gave analysis. 24       A. And I decline to answer on the advice of counsel. 25       Q. (BY MR. GEAR) Do you think SB 14 will increase	208 1 answer? 2       A. I decline to answer on advice of counsel. 3       Q. (BY MR. GEAR) Are you aware of any 4 communications where the strategy to pass SB 14 was 5 discussed? 6       MR. MCKENZIE: Same objection to the extent 7 it reveals legislator communications or governor 8 communications. 9       MR. GEAR: I think if we take a quick break, 10 maybe a 10-minute break, I may be able to wrap up quickly. 11       MR. MCKENZIE: Okay. 12       (Break.) 13       MR. GEAR: Back on the record. 14       MR. MCKENZIE: Before you ask your first 15 question I think you wanted to clarify the record about 16 something. 17       THE WITNESS: Yes. Reading the bill 18 refreshed my recollection. I believe, and I could be 19 wrong there were so many questions, but I believe you 20 asked me if I remembered any meetings with the Attorney 21 General's office regarding this bill. 22       Q. (BY MR. GEAR) I did ask you that. 23       A. And I do. I won't be able to answer any 24 questions on it, but I do recall meetings with the 25 Attorney General's office over a provision of the bill.



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209 1 Q. There are some questions you can answer. When 2 did that meeting occur? 3 A. Late in the session. I don't know exactly when. 4 Q. And we're talking about the 2011 session? 5 A. 2011 session during the consideration of Senate 6 Bill 14. 7 Q. And do you recall who was present during that 8 meeting? 9 A. I'm sure our general counsel was there and 10 several people from the AG's office, and I can't remember 11 exactly who attended. They came over to our place, which 12 was rare. 13 Q. When we're talking about "were there," can you 14 tell me where that meeting occurred? 15 A. In general counsel's office in the conference 16 room they have. 17 Q. For the record, can you tell the subject matter 18 of that meeting? 19 MR. MCKENZIE: I'm going to object to -- for 20 the very broad statement as to something that might appear 21 on a privilege log. Don't go into any detail as to any 22 communications you had with the office of the Attorney 23 General. 24 A. Okay. I definitely need some advice -- and I 25 have my own privilege log --	211 1 A. I don't remember it. I may have known at the 2 time, but I don't remember any as we sit here today. 3 (Exhibit 311 was marked.) 4 Q. (BY MR. GEAR) Showing you what's marked as 5 Exhibit No. 311. 6 MR. GEAR: For the record, this exhibit does 7 not follow the exhibit numbers of the previously marked 8 exhibits. 9 (Witness reviews document.) 10 Q. (BY MR. GEAR) Did you have a chance to review 11 that exhibit? 12 A. Yes. Except for the last couple of pages. Give 13 me just a second. I want to finish the last couple of 14 pages. 15 Q. Sure. 16 (Witness reviews document.) 17 MR. MCKENZIE: Just for the record, these 18 are several documents, right, not all part of one e-mail; 19 is that correct? 20 MR. GEAR: I was going to let him identify 21 it. 22 MR. MCKENZIE: Oh, sorry. 23 MR. GEAR: But that's right. Yes, there 24 would be several. 25 MR. MCKENZIE: Okay.
210 1 MR. MCKENZIE: You can say it was about 2 voter ID, but I wouldn't get into any further 3 communications than that, if it was about voter ID. I 4 don't know. Or the bill number, things of that effect. 5 A. It was about a provision of the bill. 6 Q. (BY MR. GEAR) And you're talking about SB 14? 7 A. SB 14. 8 Q. Did the King Street Patriots propose any language 9 for SB 14? 10 A. Not that I recall. 11 Q. Did the King Street Patriots propose any language 12 for voter ID in general? 13 A. No, not that I recall. 14 Q. Are you aware of whether there were any promises 15 made to the King Street Patriots from the governor 16 regarding voter ID? 17 A. Not that I know of but -- I'm not aware of any. 18 Q. (BY MR. GEAR) Are you aware of any 19 communications with any other outside groups regarding 20 voter ID, communications between the governor and outside 21 groups? 22 A. As we sit here today, I don't. But if you can 23 refresh my recollection, that would be very helpful. 24 Q. I'm just trying to determine what you know. So 25 is your --	212 1 Q. (BY MR. GEAR) Did you have a chance to review 2 the exhibit before you? 3 A. (Witness nods head.) 4 Q. Can you identify what this is? 5 A. These are different e-mails. Some of them are 6 related to each other and some aren't. Most of them are 7 from the Secretary of State's office although some of them 8 are from within the governor's office. 9 Q. So let's just start from Page 1, or the first 10 page of exhibit -- 11 A. 40050. 12 Q. Yes. 40050. You see that this was produced by 13 the State of Texas, correct? 14 A. That's the TX designation? 15 Q. Yes. 16 A. Yes. 17 Q. Do you see the designation of legislative 18 privilege on this document? 19 A. Oh, I'm sorry. We're on Page 40055? 20 Q. I'm sorry. 21 A. I skipped it. I'm sorry. 22 Q. Do you see the designation of legislative 23 privilege? 24 A. Yes. 25 Q. Are you claiming legislative privilege based on



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<p>1 director.</p> <p>2 Q. And turning your attention to 24520, I believe.</p> <p>3 A. Yes.</p> <p>4 Q. I have no further questions on that.</p> <p>5 Do you want to change any of the answers that you</p> <p>6 have provided today?</p> <p>7 A. Not as we sit here today. I'm sure if I see the</p> <p>8 transcript and have an errata sheet, but at this time I</p> <p>9 don't have any.</p> <p>10 Q. Throughout the course of the deposition you've</p> <p>11 corrected the record when you've remembered something. Is</p> <p>12 there any other corrections or anything that you want to</p> <p>13 change on the record as you've testified today?</p> <p>14 A. Not at this time.</p> <p>15 Q. Is there anything additional you want to share</p> <p>16 regarding the voter ID legislation?</p> <p>17 A. No, sir.</p> <p>18 MR. GEAR: So at this point I have no</p> <p>19 additional questions and I'm going to allow Chad to ask</p> <p>20 you a few questions, but I would say that I'm going to</p> <p>21 hold this deposition open pending the Court's ruling on</p> <p>22 the privilege issue. So, in other words, we may all be</p> <p>23 back here again.</p> <p>24 EXAMINATION</p> <p>25 BY MR. DUNN:</p>	<p>225</p> <p>1 deliberative process grounds.</p> <p>2 MR. DUNN: I'm not asking what it is, I'm</p> <p>3 just asking if he has it, yes or no.</p> <p>4 MR. MCKENZIE: But you're asking him if he</p> <p>5 has information on voter fraud. I was going to inform the</p> <p>6 knowledge he has before or while an analysis from the</p> <p>7 governor's office, so I'm going to stand on the objection.</p> <p>8 MR. DUNN: So your position to the Court is</p> <p>9 he can't even identify whether he has information</p> <p>10 independent from the public record.</p> <p>11 MR. MCKENZIE: Yeah. My position to the</p> <p>12 Court is that to the extent it would reveal -- the fact</p> <p>13 that he has information on voter fraud in his office that</p> <p>14 he could have relied on in his analysis, then that would</p> <p>15 be privileged, yes.</p> <p>16 MR. DUNN: And you understand the Court has</p> <p>17 said we're allowed to obtain information at least to the</p> <p>18 effect of a privilege log. So if I don't even know if</p> <p>19 there is that information, then it's like not providing a</p> <p>20 privilege log. I'm not asking what it is, I'm just asking</p> <p>21 him to identify whether he's got it.</p> <p>22 MR. MCKENZIE: Right, I understand. But to</p> <p>23 me the layer is more specific than just talking about</p> <p>24 voter ID. You're talking about voter fraud, which is one</p> <p>25 of the issues that's in contention. How much it was</p>
<p>1 Q. Is it Scholfield or Scholfield?</p> <p>2 A. Scholfield.</p> <p>3 Q. Scholfield. I beg your pardon. My name is Chad</p> <p>4 Dunn. I represent the intervenors in the case, several</p> <p>5 groups of intervenors, and I'm the representative for all</p> <p>6 of them here today. I just have a few questions, and some</p> <p>7 of them are going to sound like I'm asking the same thing,</p> <p>8 but that's really just trying to get you to the point</p> <p>9 where you're at the subject matter I want to talk to you</p> <p>10 about. Okay.</p> <p>11 You were asked some questions about voter</p> <p>12 registration and fraudulent voter registration generally</p> <p>13 and the public testimony regarding that. Do you remember</p> <p>14 that?</p> <p>15 A. I remember the basic area of testimony.</p> <p>16 Q. I'm going to be very precise in my questioning</p> <p>17 and at no point do I intend to ask you a question about</p> <p>18 anything that's not in the public record. Okay?</p> <p>19 A. (Witness nods head.)</p> <p>20 Q. I'll try to make that clear, but I just want you</p> <p>21 to know that up front.</p> <p>22 Other than what is in the public testimony in</p> <p>23 support of SB 14, do you have any other information</p> <p>24 regarding voter fraud as it applies to SB 14?</p> <p>25 MR. MCKENZIE: I'm going to object on</p>	<p>226</p> <p>1 weighed or analyzed by the governor's office I think is</p> <p>2 something that would be subject to the deliberative</p> <p>3 process privilege.</p> <p>4 MR. DUNN: I just want the record to note</p> <p>5 that I have a number of questions on this subject, and</p> <p>6 we'll have to get a Court ruling on it and come back,</p> <p>7 assuming my interpretation of the Court's earlier rulings</p> <p>8 are correct.</p> <p>9 Q. (BY MR. DUNN) Off of that issue now for the time</p> <p>10 being, with respect to testimony you gave about there</p> <p>11 being, I think you said ten thousand or tens of thousands,</p> <p>12 I'm not sure I heard you right, potentially fraudulent</p> <p>13 voter registration. Are you with me at least in the area</p> <p>14 of the testimony?</p> <p>15 A. Yes.</p> <p>16 Q. Do you remember what county or counties that</p> <p>17 public testimony concerned?</p> <p>18 A. I remember Harris County in particular. I don't</p> <p>19 remember what other counties.</p> <p>20 Q. Was the testimony from a Harris County official?</p> <p>21 A. I believe so. Or staff members.</p> <p>22 Q. Okay. Other than that testimony concerning the</p> <p>23 situation in Harris County, did you hear from any other</p> <p>24 counties that had a similar problem?</p> <p>25 A. To be honest, I don't remember the rest of the</p>



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<p>229</p> <p>1 hearing. I'm from Harris County so I noted, but I don't 2 remember the rest of the...</p> <p>3 Q. There may have been others, but the only one you 4 can recall is Harris County?</p> <p>5 A. That's correct.</p> <p>6 Q. Was -- do you recall if anybody testified at that 7 hearing to sort of rebut the allegations that Harris 8 County had made?</p> <p>9 A. I don't recall.</p> <p>10 Q. So essentially your opinions, as you stated them 11 earlier about potential fraud and voter registration was a 12 repetition of the testimony you heard from the Harris 13 County folks; is that true?</p> <p>14 A. No.</p> <p>15 Q. In other words, you have independent belief that 16 such fraud in voter registration occurs?</p> <p>17 A. Yeah, I would say that whatever testimony I heard 18 that day was part of whatever went into making up my 19 analysis at the time.</p> <p>20 Q. So you had other information regarding 21 fraudulent --</p> <p>22 A. I can't remember all --</p> <p>23 Q. -- voter registration?</p> <p>24 A. I'm sorry, my fault.</p> <p>25 Q. You had other information regarding fraudulent</p>	<p>231</p> <p>1 much about them. I don't read "The Chronicle" as much as 2 I should.</p> <p>3 Q. (BY MR. DUNN) Have you accessed the Court file 4 with regard to that litigation?</p> <p>5 A. No.</p> <p>6 Q. And did you play any legal role in advising 7 Harris County as it pertains to that issue?</p> <p>8 A. No, I've never worked for Harris County.</p> <p>9 Q. Have you ever dealt with the election officials 10 in Harris County for any reason?</p> <p>11 A. Yes.</p> <p>12 Q. On what occasions?</p> <p>13 A. When I worked in the governor's office.</p> <p>14 Q. And did it always relate to election matters?</p> <p>15 A. Do you mean any time I dealt with anybody from 16 Harris County or when I dealt with the people that did 17 election law?</p> <p>18 Q. When you dealt with Harris County officials, was 19 it for issues other than election law?</p> <p>20 A. I would deal with them on other issues too, I'm 21 sure.</p> <p>22 Q. Did you have anything to do with organizing the 23 testimony for the legislative hearings?</p> <p>24 A. No.</p> <p>25 Q. If the evidence ultimately demonstrates that</p>
<p>230</p> <p>1 voter registration?</p> <p>2 A. I believe we did. I do not recall what it was at 3 this time.</p> <p>4 Q. So by way of example in the public record only, 5 the only thing you can point us to is this Harris County 6 testimony?</p> <p>7 A. As we sit here today, the only thing I can 8 recall.</p> <p>9 Q. Are you aware of litigation regarding Harris 10 County's malfeasance in the operation of the voter 11 registration operation?</p> <p>12 MR. MCKENZIE: To the extent that you 13 acquired knowledge of that during your tenure and during 14 your analysis at the governor's office, I instruct you not 15 to answer it.</p> <p>16 A. That's the only format in which I learned any of 17 this, so I decline to answer on the advice of counsel.</p> <p>18 Q. (BY MR. DUNN) Have you observed any of the 19 numerous newspaper and press reporting regarding 20 litigation concerning Harris County's voter registration 21 operation?</p> <p>22 MR. MCKENZIE: Same objection to the extent 23 you acquired that while you were working at the governor's 24 office and it's part of your analysis.</p> <p>25 A. I think I've seen articles. I don't remember</p>	<p>232</p> <p>1 Harris County doesn't have fraudulent registrations, 2 instead it has an organized outfit to suppress voter 3 registration, then the information you relied upon in 4 support of this bill would also be inaccurate. Would you 5 agree?</p> <p>6 MR. MCKENZIE: I'm going to object on 7 speculation grounds.</p> <p>8 A. That certainly calls for a lot of speculation, 9 but also, as I say, there was more than just Harris County 10 involved. Plus, as I testified earlier, there was a 11 general desire to demonstrate to the people who were 12 voting were who they said they were, irrespective of -- as 13 Mr. Gear said problems. It's not just a matter of 14 problems, it's also a matter of if you have the 15 opportunity going forward to demonstrate that voters are 16 who they say they are, that makes your elections more 17 fair.</p> <p>18 Q. (BY MR. DUNN) There was a general desire to 19 support this legislation in some way factually, isn't that 20 true?</p> <p>21 A. Repeat that.</p> <p>22 Q. There was a general desire to support this 23 legislation by some factual basis, isn't that true?</p> <p>24 MR. MCKENZIE: I'm going to object to the 25 extent that the desire is from the governor's office. To</p>



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233 1 the extent it's a matter of public record, you can answer. 2 A. I'm not sure I understand the question. 3 Q. (BY MR. DUNN) That's fair enough. Have you ever 4 done any work actually administering elections? 5 A. No. 6 Q. Your experience as its deals with election laws 7 is advising the governor, as far as I can tell. Is that 8 true? 9 A. Yes. 10 Q. In other words, you haven't run campaigns, been 11 an election lawyer, otherwise administered election 12 projects? 13 A. No, I've been involved in campaigns. The rest of 14 it I haven't. I've not been an election lawyer or -- I'm 15 sorry. Whatever -- what was the -- 16 Q. You haven't administered elections on behalf of 17 some government authority? 18 A. No. I think I worked the polls one time. 19 Q. As an election judge or volunteer? 20 A. Volunteer. 21 Q. As an observer appointed by a candidate or party 22 or actually volunteered for the election apparatus? 23 A. I believe I was a volunteer for the election 24 apparatus once. I've observed for candidates I guess a 25 couple of times. I observed the count for the Harris	235 1 watcher/observers? 2 A. No. 3 Q. During the 2010 election did you attend any King 4 Street Patriots meetings in the run-up to the 2010 5 election? 6 A. I don't think so. 7 Q. When was the last time you'd been to a meeting? 8 A. I went to one a couple of weeks ago. They were 9 having -- no, that was a meeting at their building, but it 10 was not a meeting at the King Street Patriots. I take 11 that back. But I've been to one during -- during the most 12 recent election cycle. I've been to probably two or 13 three. 14 Q. You're talking about this primary that we're 15 stepping into now? 16 A. Yes. 17 Q. I see. Not in 2010? 18 A. Not in 2010. 19 Q. Is it true that you relationship, whatever it is, 20 with King Street Patriots didn't start until this election 21 cycle? 22 A. Yes, except the fact that they came to the office 23 before that. They came to the governor's office during 24 the last session, if not also maybe the session before. 25 Q. And I heard your testimony about that. I'm now
234 1 County Republican party once. But normally I -- to the 2 extent that I'd be involved in election, it would be 3 helping a candidate, not necessarily the polls. 4 Q. I understand you work in Travis County? That's 5 where we are today, isn't it? 6 A. Yes. I do not now. I did at the time? 7 Q. Where did work now, in Harris County? 8 A. I don't. 9 Q. Are you registered to vote in Harris County or 10 Travis County? 11 A. Harris County. 12 Q. Has that remained the same? 13 A. Yes. 14 Q. Even while you were working for the governor? 15 A. Yes. I always went home on the weekends and 16 maintained my residence in Houston. 17 Q. Why did you not move your residence to Travis 18 County? 19 A. I prefer Houston. 20 Q. Have you ever been to a King Street Patriots 21 meeting? 22 A. Yes. 23 Q. How many? 24 A. Probably four or five. 25 Q. Did you volunteer to be one of their poll	236 1 more focused on your personal interaction in attending the 2 group's functions. That all occurred in the run-up to 3 this election, as I understand? 4 A. Most, if not all. I probably was at a meeting or 5 two prior, but I was not a regular attendee. In fact I -- 6 I spoke at one of their meetings. They asked me to come 7 speak on -- I was speaking to various groups on the 8 budget, how the Texas state budget works, and I guess they 9 saw me alone and asked me to come speak to their meetings, 10 so I spoke to a King Street Patriots meeting. 11 Q. Did you offer any information about election laws 12 when you spoke? 13 A. No, it was a presentation about how the Texas 14 state budget works. 15 Q. Did you attend any of the meetings that 16 Governor Perry attended? 17 A. No. 18 Q. Are you aware that Governor Perry has attended a 19 number of King Street Patriots meetings? 20 A. I know that he's attended one. 21 Q. But you weren't present? 22 A. I was not present. 23 Q. Would you agree that Governor Perry is a strong 24 supporter of the King Street Patriots? 25 MR. MCKENZIE: Objection; vague.



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<p>1 A. I'm not sure.</p> <p>2 Q. (BY MR. DUNN) Do you have any information or</p> <p>3 knowledge that you learned about the King Street Patriots</p> <p>4 poll watching activities from 2010?</p> <p>5 A. Do I have information about their poll watching</p> <p>6 activities?</p> <p>7 MR. MCKENZIE: I'm going to object to the</p> <p>8 extent that you learned about that during your time in the</p> <p>9 last session, 2011 session, in service to the governor.</p> <p>10 To the extent you have knowledge --</p> <p>11 I'm going to object to the extent you have</p> <p>12 knowledge acquired during the 2011 legislative session in</p> <p>13 service of the governor. To the extent that you have</p> <p>14 knowledge outside of that service, you may answer the</p> <p>15 question.</p> <p>16 A. I know generally that they had a program of</p> <p>17 training and providing poll watchers. I wasn't involved</p> <p>18 in it. I don't know specifically about it.</p> <p>19 Q. (BY MR. DUNN) Have you volunteered to be a poll</p> <p>20 watcher for King Street Patriots?</p> <p>21 A. No.</p> <p>22 Q. Have you attended any of their training?</p> <p>23 A. No.</p> <p>24 Q. Have you watched any of the videos they prepared?</p> <p>25 A. I didn't know they had any.</p>	<p>1 of Justice ultimately sent in inspectors in 2010 because</p> <p>2 of King Street Patriots activities?</p> <p>3 MR. MCKENZIE: Same objection.</p> <p>4 A. No.</p> <p>5 Q. (BY MR. DUNN) Have you attended any of the</p> <p>6 statewide or nationwide summits for King Street Patriots?</p> <p>7 A. I think one of the events I went to was their</p> <p>8 first summit. They had something at a hotel that was</p> <p>9 being simulcast, and I was there for a couple of hours on</p> <p>10 a Saturday morning.</p> <p>11 Q. That was a Sheraton Brookhollow hotel there at</p> <p>12 610 and 290?</p> <p>13 A. I don't recall. I was probably an hour and a</p> <p>14 half.</p> <p>15 Q. Did you watch any of the simulcast speeches?</p> <p>16 A. I probably watched some of the speeches, but</p> <p>17 again usually I go to the events, I talk to people I know</p> <p>18 in the audience. And I don't know for a fact that it was</p> <p>19 the summit, but it seems like it might have been.</p> <p>20 Q. Did you see Catherine Engelbrecht there and speak</p> <p>21 with her?</p> <p>22 A. I probably did.</p> <p>23 Q. Have you made any financial donations to King</p> <p>24 Street Patriots?</p> <p>25 A. No.</p>

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Todd Smith

June 1, 2012

<p>IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA</p> <p>STATE OF TEXAS, ) ) Plaintiff, ) ) VS. ) CASE NO. 1:12-CV-00128 ) (RMC-DST-RLW) ERIC H. HOLDER, JR., in his ) Three-Judge Court official capacity as Attorney ) General of the United States, ) Defendant. ) ERIC KENNIE, et al., ) Defendant-Intervenors, ) TEXAS STATE CONFERENCE OF ) NAACP BRANCHES, et al., ) Defendant-Intervenors, ) TEXAS LEAGUE OF YOUNG VOTERS ) EDUCATION FUND, et al., ) Defendant-Intervenors, ) TEXAS LEGISLATIVE BLACK ) CAUCUS, et al., ) Defendant-Intervenors, ) VICTORIA RODRIGUEZ, et al., ) Defendant-Intervenors. ) ----- ORAL DEPOSITION OF TODD SMITH JUNE 1, 2012 ----- ORAL DEPOSITION of TODD SMITH, produced as a witness</p>	1	<p>APPEARANCES</p> <p>FOR THE PLAINTIFF: MATTHEW FREDERICK Assistant Attorney General ATTORNEY GENERAL OF TEXAS P.O. Box 12548 Austin, Texas 78711 Tel: (512) 936-1307 Email: Matthew.frederick@oag.state.tx.us</p> <p>FOR THE DEFENDANT: ELIZABETH S. WESTFALL MICHELLE A. MCLEOD Trial Attorneys U.S. DEPARTMENT OF JUSTICE 950 Pennsylvania Avenue, NW Room 7254 NWB Washington, DC 20005 Tel: (202) 305-0115 Email: Elizabeth.westfall@usdoj.gov</p> <p>FOR THE DEFENDANT-INTERVENOR: MALDEF NINA PERALES LUIS FIGUEROA MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND (MALDEF) 110 Broadway, Suite 300 San Antonio, Texas 78205 Tel: (210) 224-5476 Email: Nperales@maldef.org</p> <p>ALSO PRESENT: JUAN CARLOS IBARRA (Advancement Project) JANINE LOPEZ (MALDEF)</p>	3
<p>1 at the instance of the Defendant, and duly sworn, was 2 taken in the above-styled and numbered cause on the 1st 3 day of June, 2012, from 10:45 a.m. to 4:54 p.m., before 4 Jean Thomas Fraunhofer, CSR in and for the State of 5 Texas, reported by machine shorthand, at the Law Offices 6 of DECHERT LLP, 300 West 6th Street, Suite 210, Austin, 7 Texas 78701, pursuant to the Federal Rules of Civil 8 Procedure and the provisions stated on the record or 9 attached hereto.</p> <p>10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	2	<p>WITNESS INDEX PAGE</p> <p>TODD SMITH Examination by Ms. Westfall 5 Examination by Ms. Perales 181</p> <p>Signature and Changes 252 Reporter's Certificate 253</p> <p>EXHIBITS PAGE</p> <p>NO. DESCRIPTION PAGE</p> <p>EXHIBIT US-28 HB218 (previously marked) 87 EXHIBIT US-29 HB362 (previously marked) 96 EXHIBIT US-81 SB14 (previously marked) 138 EXHIBIT US-88 2/8/11 Letter to John Beck from David Dewhurst (previously marked) 239 EXHIBIT US-100 Amended Notice of Deposition 11 EXHIBIT US-101 Documents Privilege Log 58 EXHIBIT US-102 HB1706 72 EXHIBIT US-103 Texas Legislative Online History 100 (SB362) EXHIBIT US-104 Clear Lake GOP website screen 111 EXHIBIT US-105 3/28/09 Lubbock Online website 117 EXHIBIT US-106 HB401 128 EXHIBIT US-107 HB1338 132 EXHIBIT US-108 Texas Legislative Online History 149 (SB14) EXHIBIT US-109 3/21/11 House Journal 153 EXHIBIT US-110 3/23/11 House Journal 169 RODRIGUEZ-15 HB1706 181 RODRIGUEZ-16 3/6/09 Memo to Todd Smith from Hope Andrade 189 RODRIGUEZ-17 4/6/09 Committee on Elections Transcript 198 RODRIGUEZ-18 4/7/09 Committee on Elections Transcript (Vol. 1) 199 RODRIGUEZ-19 4/7/09 Committee on Elections Transcript (Vol. 3) 203 RODRIGUEZ-20 4/6/09 Committee on Elections Transcript (Vol. 2) 208 RODRIGUEZ-21 A Bill to be Entitled An Act 209 RODRIGUEZ-22 4/29/09 Quorum Report 215 RODRIGUEZ-23 5/6/09 Quorum Report 219 RODRIGUEZ-24 2/9/10 Quorum Report 236</p>	4



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Todd Smith

June 1, 2012

<p>1 A. From SMU, I graduated in 1985.</p> <p>2 Q. What year did you graduate from the University</p> <p>3 of Texas?</p> <p>4 A. I guess it would have been December of 1988.</p> <p>5 Q. Did you maintain an active bar license?</p> <p>6 A. Yes.</p> <p>7 Q. What state is that with?</p> <p>8 A. Texas.</p> <p>9 Q. And do you have a license in any other states?</p> <p>10 A. No.</p> <p>11 Q. Can you list all of the jobs that you have had</p> <p>12 since you graduated from law school in chronological</p> <p>13 order starting with right after law school?</p> <p>14 A. Locke, Purnell, Rain, Harrell was the name of</p> <p>15 it. Now it's Locke Lord, I think, or whatever, and then</p> <p>16 the Note Boom Law Offices, and then my own law practice.</p> <p>17 Q. What is your current job?</p> <p>18 A. I am a plaintiff's attorney, sole proprietor,</p> <p>19 in Bedford, Texas.</p> <p>20 Q. What is your area of practice?</p> <p>21 A. Personal injury.</p> <p>22 Q. How long have you had your own practice?</p> <p>23 A. Since 1996.</p> <p>24 Q. Do you have any partners?</p> <p>25 A. No.</p>	<p>21</p> <p>1 A. Sure.</p> <p>2 Q. -- since '96?</p> <p>3 A. Yes. I think it's becoming more diverse in a</p> <p>4 variety of regards. It's just not Hispanic. It's very</p> <p>5 diverse. We've got elementary schools on the south side</p> <p>6 of my district where there's 50 languages spoken in that</p> <p>7 one school, so just very, very diverse from all over the</p> <p>8 world.</p> <p>9 Q. Thank you. How many staff do you have in your</p> <p>10 House office?</p> <p>11 A. Depends on when you are talking about, but</p> <p>12 currently during the interim, I have one in Austin and</p> <p>13 one in the district.</p> <p>14 Q. And when the House is in session?</p> <p>15 A. Then we add a few temporary employees in the</p> <p>16 Austin office that work session only usually, students.</p> <p>17 Q. Can you identify the name and title of every</p> <p>18 person who has worked in your office who has handled</p> <p>19 voter ID or photo ID issues since 2005?</p> <p>20 A. Oh, boy. Golly.</p> <p>21 Q. And I put aside interns.</p> <p>22 A. I'm trying to remember who my chief of staffs</p> <p>23 have been since 2005. I'm not going to be able to</p> <p>24 remember their names. That's awful, but --</p> <p>25 Q. Could you perhaps identify the central staff</p>
<p>1 Q. When were you first elected to the Texas House</p> <p>2 of Representatives?</p> <p>3 A. 1996.</p> <p>4 Q. What area does that encompass?</p> <p>5 A. Geographically?</p> <p>6 Q. Geographically.</p> <p>7 A. Roughly the Hurst, Euless, Bedford area.</p> <p>8 Q. What is the number of the district?</p> <p>9 A. 92.</p> <p>10 Q. What are the demographics racially of the</p> <p>11 district approximately?</p> <p>12 A. Oh, gosh.</p> <p>13 Q. I don't want to hold you to it precisely.</p> <p>14 A. I mean, it's --</p> <p>15 MR. FREDERICK: Object on relevance, but</p> <p>16 you can answer the question.</p> <p>17 A. I mean, it's overwhelmingly anglo, but there is</p> <p>18 a substantial, I guess, Hispanic minority population and</p> <p>19 a fairly substantial Tongan minority population in south</p> <p>20 Euless, and I just would be wrong, I think, if I</p> <p>21 asked -- I mean, I would venture to guess that maybe</p> <p>22 30 percent is minority of some type. I could be wrong.</p> <p>23 Q. In terms of the growth and changes in</p> <p>24 population in your house district, has it been trending</p> <p>25 sort of increasingly Hispanic --</p>	<p>22</p> <p>1 people who helped you with photo ID and voter ID from</p> <p>2 2005 to the present?</p> <p>3 A. It's like -- These are people that you work</p> <p>4 with for four months and then they disappear on you and</p> <p>5 you don't see them again. Oh, boy.</p> <p>6 Q. You know what, Mr. Smith, maybe if you are</p> <p>7 having difficulty remembering them, we can discuss them</p> <p>8 in conjunction with particular legislation and that will</p> <p>9 refresh your recollection. Would that be helpful?</p> <p>10 A. Steven Schar is certainly one of them. He was</p> <p>11 the clerk of the elections committee, and then, gosh,</p> <p>12 the young man that's now works, I think, in the Perry</p> <p>13 political operation. I just can't remember his name.</p> <p>14 Those two -- There were two guys that were kind of</p> <p>15 actively involved in that issue in the session where I</p> <p>16 was involved in.</p> <p>17 Q. Were -- These two individuals, they worked for</p> <p>18 you as committee staff or handled your responsibilities</p> <p>19 on the election committee?</p> <p>20 A. Yeah. My clerk and my assistant clerk, so,</p> <p>21 yes, elections committee staff.</p> <p>22 Q. Was this in 2005 and 2009?</p> <p>23 A. Not '05. It was 2009.</p> <p>24 Q. What were their responsibilities generally?</p> <p>25 A. Just the -- the -- to conduct the affairs of</p>



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<p>1 the elections committee in every respect.</p> <p>2 Q. Does that mean coordinating witnesses, working</p> <p>3 with other members on the committee? What are those</p> <p>4 responsibilities?</p> <p>5 A. Yeah. I mean, it means visiting with me about</p> <p>6 which bills would be set for hearing, making sure</p> <p>7 that -- that the procedures are followed properly for</p> <p>8 setting bills for hearing and that -- that members of</p> <p>9 the committee have the information they need to know</p> <p>10 what bills are going to be heard and that the -- you</p> <p>11 know, if it's invited testimony, make sure the people</p> <p>12 are invited to testify that need to be, and to the</p> <p>13 extent that it's public testimony, that the proper</p> <p>14 notice is given so that whatever members of the public</p> <p>15 wish to testify can do so, and, you know, then following</p> <p>16 the hearings, arrange other hearings to vote bills out</p> <p>17 of committee, you know, just what all committee clerks</p> <p>18 do.</p> <p>19 Q. Would those clerks be responsible in any way</p> <p>20 for communicating with their counterparts in the Senate</p> <p>21 whether it was -- I guess it would be the committee as a</p> <p>22 whole in 2009?</p> <p>23 A. I don't know. I mean, I can't say. I don't --</p> <p>24 You know, I don't know the extent to which there were</p> <p>25 incidental communications between staff and the House on</p>	25	<p>1 with what I read, so I don't really remember, no.</p> <p>2 Q. Did you recently --</p> <p>3 A. It may not even have been witnesses. It may</p> <p>4 have been during the time when there was argument being</p> <p>5 made between senators, and, again, you know, I want</p> <p>6 to -- it wasn't that -- I want to believe that that was,</p> <p>7 you know, the time when Senator Fraser said he couldn't</p> <p>8 hear Wendy Davis. I do remember that. If I recall</p> <p>9 correctly, I think I was on the floor when that</p> <p>10 happened.</p> <p>11 Q. Okay. Thank you.</p> <p>12 A. That didn't have anything to do with voter ID,</p> <p>13 but it was entertaining.</p> <p>14 Q. Did you recently campaign for office in the</p> <p>15 Senate?</p> <p>16 A. Yes.</p> <p>17 Q. What district was that?</p> <p>18 A. Senate District 9.</p> <p>19 Q. Did you resign from the House -- your House</p> <p>20 seat to run?</p> <p>21 A. I did.</p> <p>22 Q. Why did you decide to run in the Senate?</p> <p>23 A. Oh, boy.</p> <p>24 MR. FREDERICK: Objection. Relevance.</p> <p>25 MS. WESTFALL: It's just some background</p>	27
<p>1 elections and staff on the Senate. I presume there was</p> <p>2 at least some degree of contact along the way.</p> <p>3 Q. Did they communicate with members of the</p> <p>4 Senate?</p> <p>5 A. I doubt extensively. Maybe not at all.</p> <p>6 Q. Were you the one who handled those</p> <p>7 communications yourself?</p> <p>8 A. Yet to the extent that they occurred, then that</p> <p>9 would have been me. I did -- You know, I would have</p> <p>10 talked to Fraser a time or two and actually observed</p> <p>11 some of the proceedings in the Senate, just small</p> <p>12 portion of the time they spent over there, just</p> <p>13 watching, talking to people.</p> <p>14 Q. Were you on or near the Senate floor when the</p> <p>15 Senate considered Senate Bill 362 in 2009?</p> <p>16 A. For part of it, yes.</p> <p>17 Q. How long were you physically there?</p> <p>18 A. Boy, I think I probably got bored within a</p> <p>19 couple of hours, I don't remember how long, but it</p> <p>20 wouldn't have been nearly as long as they had to be</p> <p>21 there.</p> <p>22 Q. Do you remember which witnesses you got to hear</p> <p>23 speak?</p> <p>24 A. You know, I don't really remember. I could</p> <p>25 guess, but I could be -- I could be confusing what I saw</p>	26	<p>1 foundational questions, Mr. Frederick.</p> <p>2 A. You know, that was -- there's lots of reasons</p> <p>3 why I decided to do that, but just the opportunity. An</p> <p>4 open seat was certainly one of them, the belief that</p> <p>5 those Senate seats on the margin in the Senate were</p> <p>6 really important and could actually have the ability to</p> <p>7 influence public policy, unlike my House seat in the</p> <p>8 current, you know, overwhelming majority situation. And</p> <p>9 just a little bit of frustration with my leader, you</p> <p>10 know, in the House in terms of the most recent</p> <p>11 legislative session and wanting to have an opportunity</p> <p>12 to -- to serve in a different place.</p> <p>13 Q. You were unhappy with Mr. Straus because of the</p> <p>14 way he was managing your committee assignments or --</p> <p>15 A. Yeah.</p> <p>16 Q. -- the way he managed the House or what was the</p> <p>17 nub of the problem?</p> <p>18 A. Oh, it was just disappointment over how I</p> <p>19 was -- what positions I was given, and it did in my</p> <p>20 opinion relate to the voter ID issue certainly, and so,</p> <p>21 yeah, I felt like I was thrown in the bus by him and</p> <p>22 wasn't happy about it. So it was just, you know --</p> <p>23 Q. Time to try something new?</p> <p>24 A. I was a very loyal person who handled it in the</p> <p>25 I way was asked and fully protecting him and then had</p>	28



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<p>1 every reason to believe that I was going to be given a  2 chairmanship and that did not happen, and so he was not  3 happy, and I don't think that anything could fully  4 repair the way I felt about that. So it was -- it would  5 have been certainly preferable from my standpoint to  6 have the opportunity to serve in the Senate for a  7 variety of reasons, including that one.</p> <p>8 Q. I see. I see. And did you have an opponent in  9 your primary election?</p> <p>10 A. Yes.</p> <p>11 Q. Who was that individual?</p> <p>12 A. Kelly Hancock.</p> <p>13 Q. What was -- And you described the outcome of  14 the election. Why do you think Ms. Hancock prevailed?</p> <p>15 A. Mr. Hancock.</p> <p>16 MR. FREDERICK: Object to relevance, but  17 you can answer the question.</p> <p>18 A. I think because he had the -- primarily because  19 he had the endorsement of the Attorney General.</p> <p>20 Q. I see.</p> <p>21 A. I'm kidding.</p> <p>22 Q. I'm not from around here.</p> <p>23 A. No. I -- You know, he had the right groups,  24 and he was the, you know, most -- at least the one who  25 was perceived to be the most conservative candidate and</p>	29	<p>1 consideration of a specific bill in 2009. I think that  2 intrudes on legislative privilege. I will instruct you  3 not to answer the question.</p> <p>4 MS. WESTFALL: Mr. Frederick, this is not  5 about a legislative act. This is about a political  6 campaign that occurred after the consideration of the  7 bill. The bill was no longer at issue. I would ask you  8 to allow Mr. Smith to answer that question. This is not  9 privilege.</p> <p>10 MR. FREDERICK: This question directly  11 asks him for his opinion about a charge about his  12 handling of a specific piece of legislation that is at  13 issue in this case that would reveal his thoughts about  14 pending legislation because it required him to reveal  15 how he felt about how the registration was handled. I  16 would instruct him not to answer on the basis of  17 privilege.</p> <p>18 Q. (BY MS. WESTFALL) I will ask it a different  19 way. How did you respond during the campaign to that  20 charge?</p> <p>21 A. You know, by saying that it was false, and,  22 certainly, the date the bill came out of committee was a  23 fact, but it was not -- I spent the entire legislative  24 session almost night and day trying to find a way to  25 pass a voter -- a voter ID bill -- not a photo ID bill,</p>	31
<p>1 that was the one who won in all the races in our area in  2 this particular election cycle.</p> <p>3 Q. Was photo ID an issue in the campaign?</p> <p>4 A. Yeah. He hit me on it a time or two. It  5 wasn't the biggest issue, but he did put in his  6 literature that I wanted people to be able to vote with  7 a library card or something like that, even though I  8 believe he voted for the same legislation in a prior  9 session.</p> <p>10 Q. Was there anything else that -- that your  11 opponent raised in terms of photo ID during the  12 campaign?</p> <p>13 A. Not during this one. During the one two years  14 ago was the biggest issue.</p> <p>15 Q. In 2010?</p> <p>16 A. 2010. I had an opponent in my primary -- in my  17 House in that race. It was the biggest issue.</p> <p>18 Q. And what was the substance of --</p> <p>19 A. That I killed voter ID on purpose by keeping  20 the bill in committee until late in the process.</p> <p>21 Q. And what was your opinion of that charge?</p> <p>22 A. That it was ridiculous.</p> <p>23 MR. FREDERICK: I'm going to object here.</p> <p>24 I think we're getting into legislative privilege. This  25 is seeking your opinion about the process of</p>	30	<p>1 but a voter ID bill in a 76/74 legislative body, and so  2 the allegation that I did anything other than stay awake  3 at night trying to find a way to pass this bill was  4 simply false.</p> <p>5 Q. Thank you for your testimony.</p> <p>6 A. M-hm.</p> <p>7 Q. Sir, when was the last time you voted?</p> <p>8 A. Tuesday.</p> <p>9 Q. Do you usually vote in person or do you vote by  10 mail?</p> <p>11 A. Person.</p> <p>12 Q. Where is your polling place relative to your  13 residence?</p> <p>14 A. Early voting is a library in Euless. This time  15 I voted on election day at an elementary school, North  16 Euless Elementary School.</p> <p>17 Q. Was it far from your home?</p> <p>18 A. No. It's -- The library is 5 miles and the  19 elementary school is 3 miles probably.</p> <p>20 Q. So do you usually vote in person at the polls?</p> <p>21 A. Yes.</p> <p>22 Q. Have you ever seen anyone try to impersonate a  23 voter when you've been voting?</p> <p>24 A. No.</p> <p>25 Q. Have you ever witnessed what you believe to be</p>	32



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<p>33</p> <p>1 a noncitizen voting?</p> <p>2 A. No.</p> <p>3 Q. Have you ever challenged the voter's</p> <p>4 eligibility to vote yourself?</p> <p>5 A. Have I ever challenged the voter --</p> <p>6 Q. A voter's eligibility at the polls.</p> <p>7 A. No.</p> <p>8 Q. Have you served on any committee in the House</p> <p>9 that handled election issues?</p> <p>10 A. Yes.</p> <p>11 Q. When was the first session that you served on a</p> <p>12 committee in the House handling election issues?</p> <p>13 A. Craddick stuck me there at some point. I</p> <p>14 don't -- Under Mary Denny, whenever Mary Denny was</p> <p>15 chairman.</p> <p>16 Q. Was that not something that you welcomed?</p> <p>17 A. No.</p> <p>18 Q. Is this a committee that members get assigned</p> <p>19 to that's not always something of their choice?</p> <p>20 A. This depends upon who you are. Betty Brown</p> <p>21 loved that committee. I didn't.</p> <p>22 Q. Did you have a background in election law --</p> <p>23 A. No.</p> <p>24 Q. -- as a lawyer?</p> <p>25 A. No.</p>	<p>35</p> <p>1 by the House speaker as to those activities or do they</p> <p>2 act independently? Do they have their own authority to</p> <p>3 do --</p> <p>4 A. They have their own authority, but I think, you</p> <p>5 know, there's usually consultation with the speaker's</p> <p>6 office about things.</p> <p>7 Q. Are you familiar with the select committee on</p> <p>8 voter ID and voter fraud?</p> <p>9 A. I knew that there was one last session.</p> <p>10 Q. That was in 2011?</p> <p>11 A. Yes.</p> <p>12 Q. Why was that committee -- or why was that</p> <p>13 select committee convened?</p> <p>14 MR. FREDERICK: Objection. Object on</p> <p>15 privilege. To the extent this question calls for you to</p> <p>16 reveal any communication with a legislator or a staff</p> <p>17 member about the reason for why this committee was</p> <p>18 convened, I'll instruct you not to answer. If you can</p> <p>19 answer without revealing that, you may answer.</p> <p>20 A. Yeah. I mean, as far as why it was convened,</p> <p>21 that would be a question that only the speaker or his</p> <p>22 staff could answer. I don't know.</p> <p>23 Q. Was it convened in 2010 for the 2011 session?</p> <p>24 A. I don't remember that. My recollection is that</p> <p>25 it was convened for the first time in the session itself</p>
<p>34</p> <p>1 Q. Have you ever had any experience researching or</p> <p>2 understanding issues under the Texas Election Code or</p> <p>3 Federal election laws before that time?</p> <p>4 A. No.</p> <p>5 Q. So was 2005 the first time; do you believe?</p> <p>6 A. If that's when Mary Denny was chairman, yes,</p> <p>7 and then he would have gone off and then I was chair in</p> <p>8 2009. Those are the only two sessions I ever served on</p> <p>9 the committee.</p> <p>10 Q. Who was the speaker at the time who appointed</p> <p>11 you to that committee --</p> <p>12 A. To chair or to --</p> <p>13 Q. -- in 2005 to serve on the committee?</p> <p>14 A. Craddick.</p> <p>15 Q. And I believe you testified you were the</p> <p>16 chairman of the committee in 2009; is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. What responsibilities does a member have at</p> <p>19 chairing a committee as opposed to serving on a</p> <p>20 committee?</p> <p>21 A. The power to set bills for hearing. The power</p> <p>22 to not set bills for hearing. The power to put bills up</p> <p>23 for a vote in committee. The power not to. I think</p> <p>24 that's the biggest part of it.</p> <p>25 Q. And are chairs of committees generally directed</p>	<p>36</p> <p>1 in 2011.</p> <p>2 Q. Were you a party to any of the communications</p> <p>3 related to the convening of that committee?</p> <p>4 A. No.</p> <p>5 Q. How did you learn about it?</p> <p>6 A. I think I learned about it when the committee</p> <p>7 assignments came out that I was not happy about it.</p> <p>8 Q. I see. I see. And was who was assigned to</p> <p>9 serve as the chair of that committee?</p> <p>10 A. Dennis Bonnen.</p> <p>11 Q. And Ms. Harless was also serving on that</p> <p>12 committee; is that right?</p> <p>13 A. I don't remember that. I don't remember, but I</p> <p>14 wouldn't be surprised.</p> <p>15 Q. Why do you think Mr. Bonnen was assigned to</p> <p>16 chair that committee?</p> <p>17 A. I don't know.</p> <p>18 Q. Was it convened to one bill?</p> <p>19 A. That's my understanding, but I don't know for</p> <p>20 sure.</p> <p>21 Q. And that bill was Senate Bill 14; is that</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. And so you did not even serve on that</p> <p>25 committee; is that correct?</p>



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<p>1 A. That's correct.</p> <p>2 Q. Can you identify based on your experience in 3 the House any other selected committees that were 4 convened to hear one bill in the session?</p> <p>5 A. Well, you know, I served on in 2001, I think, a 6 select committee on teacher health insurance, for 7 example, or I think that that committee was all about 8 one bill.</p> <p>9 Q. Can you think of any others?</p> <p>10 A. I can't, but I wouldn't be surprised if there 11 aren't some because that one -- the only reason I 12 remember that is because I actually served on it myself.</p> <p>13 Q. And is it usual for select committees to only 14 consider one bill?</p> <p>15 A. Is it usual?</p> <p>16 Q. Yes. If a select committee is convened is it 17 only to consider one bill is my question.</p> <p>18 A. I think they generally are at least for 19 considering one subject matter, if not one bill.</p> <p>20 Q. Other than that one select committee you 21 remember from 2001 and the select committee on voter 22 fraud, voter ID in 2011, do you remember any other 23 select committees convened while you were serving in the 24 House?</p> <p>25 A. Right now I'm serving on a select committee on</p>	37	<p>1 Q. Yes.</p> <p>2 A. I believe they did. I believe they considered 3 legislation, and I think I recall Larry Taylor making 4 public comments about that, but I could be wrong.</p> <p>5 Q. Were there any hearings related to mail-in 6 ballot fraud in 2011 --</p> <p>7 A. I don't know.</p> <p>8 Q. -- for the committee?</p> <p>9 A. I do not know.</p> <p>10 Q. Did you attend any of the committee meetings?</p> <p>11 A. No. I was not on the committee.</p> <p>12 Q. You were not on the House elections committee 13 in 2011?</p> <p>14 A. No.</p> <p>15 Q. I see. Are you familiar with the Federal 16 Voting Rights Act?</p> <p>17 A. Generally.</p> <p>18 Q. Are you familiar with Section 5 of the Voting 19 Rights Act?</p> <p>20 A. Just generally.</p> <p>21 Q. What's your understanding of Section 5's 22 requirements based on your experience as a lawyer?</p> <p>23 A. That there are certain states that have to have 24 the changes in election law pre-cleared by the 25 Department of Justice in order for them to go into</p>	39
<p>1 school finance. Again, you know, that is something that 2 may or may not lead to a single piece of legislation, 3 but it is certainly limited to that purpose.</p> <p>4 Q. Are you aware of any other select committees 5 related to voting or elections law that were convened 6 prior to the select committee in 2011?</p> <p>7 A. I don't think so. Not that I recall.</p> <p>8 Q. Do you know whether the select committee on 9 voter ID or voter fraud was a fast track, so to speak, 10 committee?</p> <p>11 A. I don't know what that means really.</p> <p>12 Q. Who do you think would know?</p> <p>13 A. What a fast track committee means? I mean, I 14 presume, you know -- I mean, I think the committee could 15 have voted the bill out early or late just like any 16 other committee. They chose to vote it out early, but I 17 don't know if there's anything about the structure of 18 the committee that required that result.</p> <p>19 Q. Did the elections committee still operate 20 during the 2011 session even though there was this 21 select committee on voter ID?</p> <p>22 A. Yes.</p> <p>23 Q. Did the House elections committee consider any 24 legislation related to mail-in ballot fraud?</p> <p>25 A. In 2011?</p>	38	<p>1 effect.</p> <p>2 Q. And it was your understanding that Senate Bill 3 14 would have to go through that process?</p> <p>4 A. Yes.</p> <p>5 Q. As a general matter, not -- not talking about 6 Senate Bill 14 in particular, but based on your service 7 on the elections committee, what steps have you taken, 8 if any, when legislation that's subject to Section 5 is 9 being drafted and developed and considered by the House?</p> <p>10 MR. FREDERICK: I think -- I don't believe 11 that this question is intended to call for privileged 12 communications. I would just object to the extent that 13 it could be construed that way and caution you, you may 14 answer a question, but don't reveal any privileged 15 communication about a specific piece of legislation.</p> <p>16 A. Can you repeat the question again?</p> <p>17 MS. WESTFALL: Sure. It was a long 18 question. Well, actually, court reporter, could you 19 read that back?</p> <p>20 (Requested portion was read.)</p> <p>21 A. I don't -- You know, I don't recall there being 22 any specific additional steps that were taken.</p> <p>23 Obviously, we can always seek the advice of legal 24 counsel in drafting legislation to the extent that there 25 are questions about whether or not it is likely to meet</p>	40



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Todd Smith

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<p>41</p> <p>1 that standard or not, and, you know, I don't -- in 2009 2 when I was involved in this, we really didn't get close 3 enough to passing a bill to get too active in that kind 4 of discussion.</p> <p>5 Q. Ordinarily at what stage in the process would 6 you consult counsel to make sure that your bill is going 7 to be Section 5 compliant?</p> <p>8 A. I don't -- I don't think there is -- I don't 9 know that there has been any other situation where it 10 was really as sensitive as the voter ID bill.</p> <p>11 Q. I see. But, ordinarily, I mean, you would like 12 to have your legislation be pre-cleared --</p> <p>13 A. Sure.</p> <p>14 Q. -- for Section 5 because you want to implement 15 whatever you enact; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. So you would want to take steps to make sure if 18 there's any questions or concerns or potential pitfalls 19 that a legislation might have?</p> <p>20 A. Right.</p> <p>21 Q. To make sure that it was compliant, correct?</p> <p>22 A. Right. And the bottom line was that any 23 legislation that I would have drafted in 2009 that would 24 have had a chance to pass was in my judgment clearly 25 compliant.</p>	<p>43</p> <p>1 Q. Correct. 2 A. Yes. 3 Q. Was there a bill number for that? Did you file 4 that? 5 A. Yeah. It was a Senate bill as well. It went 6 through the Senate first as well, but I don't remember 7 the number. 8 Q. But it wasn't Senate Bill 362. It was 9 something else? 10 A. I don't remember. I don't remember what the 11 Senate bill was that session. 12 Q. We'll talk about it a little bit later today, 13 but thank you for your testimony. 14 What is your understanding of Section 5's 15 specific requirements? 16 A. Gosh. That -- You know, that -- you must 17 establish that it doesn't -- the legislation doesn't 18 have the intent or the effect of reducing minority 19 voting participation. 20 Q. And I believe you testified earlier that it 21 applies to all voting changes; is that right? 22 A. That's my understanding. Anything that affects 23 elections in most states. 24 Q. Have you ever received any legal advice from 25 any source on election related matters related to</p>
<p>42</p> <p>1 Q. I see. 2 A. It wasn't in my view close to any legal line, 3 and I didn't know anybody who thought any of the 4 legislation that we were considering in 2009 that, you 5 know, seriously believes that it would have a problem 6 surviving that -- that Section 5 challenge. 7 Q. What do you base that understanding on? And I 8 don't mean to intrude upon any attorney-client 9 communications you might have, but is it based on your 10 own view as a lawyer and understanding of Section 5 or 11 what? 12 A. Just -- Yeah. No. It is a sense that I had 13 from the totality of information that I had available to 14 me, including every conversation I ever had, everything 15 I ever read on the subject and, you know, familiarity 16 with the kind of arguments that are made regarding other 17 forms of the legislation and other states. And so, 18 yeah, I'm certainly not a -- a legally -- a legal expert 19 opinion. It was a policymaker's sense and judgment 20 based on everything I knew. 21 Q. Are you referring to substitute legislation 22 that you sought to advance in 2009 related to SB362? 23 A. Substitute legislation? 24 Q. I'm using the wrong term, but -- 25 A. My legislation, yes.</p>	<p>44</p> <p>1 Section 5 without revealing the content of that advice? 2 A. I don't know about -- I mean, just informal 3 conversations with -- you know, with someone who is an 4 attorney and was recommended to me as having some 5 background and expertise in that, yes. 6 Q. Who is that individual? 7 A. Ted Cruz. I think it was a brief telephone 8 conversation with our next senator. 9 Q. Are you familiar with a Federal law called The 10 Help America Vote Act? 11 A. You know, again, I couldn't tell you what it 12 does, but I have heard of it, and I'm trying to remember 13 what -- what it does. 14 Q. Do you know what forms of identification are 15 sufficient under The Help America Vote Act for purposes 16 of first time registrants? 17 A. No, I don't remember. 18 Q. Did you review the Supreme Court's decision, 19 Crawford versus Marion County, when it was issued by the 20 Supreme Court in 2008? 21 A. The Indiana case? 22 Q. Yes. 23 A. Yeah, I did. 24 Q. Did you believe it impacted the state's ability 25 to craft photo ID laws?</p>



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<p>1 A. Did I believe the case --</p> <p>2 Q. Do you believe the opinion had an ability on</p> <p>3 states covered by Section 5 of the Voting Rights Act to</p> <p>4 develop and enact photo ID laws?</p> <p>5 A. I'm not sure I understand the question.</p> <p>6 Q. Did Crawford have any impact on the state's</p> <p>7 ability to get Section 5 preclearance of photo ID laws?</p> <p>8 A. I don't -- You know, that's a legal question I</p> <p>9 don't know that I can answer, but my understanding is</p> <p>10 Indiana is not a Section 5 state and that the Voting</p> <p>11 Rights Act was not an issue. It was just an</p> <p>12 interpretation of the US constitution.</p> <p>13 Q. Are you currently -- Strike that. Are you</p> <p>14 familiar with the American Legislative Exchange Counsel?</p> <p>15 A. Yes.</p> <p>16 Q. What is it?</p> <p>17 A. It's a bunch of bills, groups that invite</p> <p>18 legislators to come and hear their pitch.</p> <p>19 Q. Are you a member of what I'll refer to as ALEC?</p> <p>20 A. Yes.</p> <p>21 Q. In what capacity?</p> <p>22 A. State Representative.</p> <p>23 Q. How long have you been a member of ALEC?</p> <p>24 A. Probably the whole time I've been in the</p> <p>25 legislature.</p>	<p>45</p> <p>1 materials related to model legislation, draft</p> <p>2 legislation, talking points, any written materials</p> <p>3 related to voter ID you can think about?</p> <p>4 A. I think there was some, but I don't -- and I</p> <p>5 probably picked it up and probably never read it.</p> <p>6 Q. Do you think you retained it in your files?</p> <p>7 A. I don't -- Probably not.</p> <p>8 Q. So it was in Atlanta sometime in 2010 to the</p> <p>9 best of your recollection?</p> <p>10 A. Yes.</p> <p>11 Q. Was it a panel of folks on photo ID?</p> <p>12 A. I think so.</p> <p>13 Q. And Mr. von Spakovsky was one of the speakers?</p> <p>14 A. I think so.</p> <p>15 Q. Do you remember any other panel members?</p> <p>16 A. The author was there. I can't remember his</p> <p>17 name.</p> <p>18 Q. Was that the -- Was that ALEC conference the</p> <p>19 only one you can remember in which photo ID was</p> <p>20 discussed?</p> <p>21 A. That's the only one I remember, yes.</p> <p>22 Q. Do you know if other members of the House or</p> <p>23 Senate are members of ALEC?</p> <p>24 A. Sure.</p> <p>25 Q. Were any of them in attendance at that meeting</p>
<p>1 Q. Do you go to its meetings and conversations?</p> <p>2 A. Sometimes I have.</p> <p>3 Q. Have you been to meetings and conversations in</p> <p>4 which photo ID was discussed?</p> <p>5 A. I don't remember. Not that I recall.</p> <p>6 Actually -- Actually, I do recall. I think there was a</p> <p>7 meeting because I, you know, remember the guy that wrote</p> <p>8 the book that testified in these hearings. I can't</p> <p>9 remember his name. Anyway, I assume you know who I'm</p> <p>10 talking about, but I can't remember his name. It starts</p> <p>11 with an F. Anyway, I think there was a meeting</p> <p>12 involving voter ID and -- you know, and it may have been</p> <p>13 an ALEC meeting and that author that I can't remember</p> <p>14 his name would have testified and that, you know,</p> <p>15 Baznowski (phonetic) or --</p> <p>16 Q. Von Spakovsky?</p> <p>17 A. Yes, him.</p> <p>18 Q. When was this meeting? Maybe you can --</p> <p>19 A. You know, I think it was after two -- during</p> <p>20 the interim after 2009 and before 2011, probably the</p> <p>21 summer following the 2009 legislative session.</p> <p>22 Q. Was the meeting in Washington DC or elsewhere?</p> <p>23 A. No, I don't think so. I'm wanting to say it</p> <p>24 was like Atlanta.</p> <p>25 Q. Did you receive at that conference any</p>	<p>46</p> <p>1 together?</p> <p>2 A. Sure. Yes.</p> <p>3 Q. Who was that?</p> <p>4 A. I don't remember.</p> <p>5 Q. Do you remember whether Senator Fraser was</p> <p>6 there?</p> <p>7 A. No.</p> <p>8 Q. Do you remember whether Lieutenant Governor</p> <p>9 Dewhurst was there?</p> <p>10 A. No, I don't remember specifically anybody being</p> <p>11 there. I can't even be sure, you know, which meeting it</p> <p>12 was, but I'm pretty sure I attended some.</p> <p>13 Q. Did --</p> <p>14 A. It could have been NCSL, but I think it was</p> <p>15 ALEC.</p> <p>16 Q. Did ALEC offer you any technical advice on</p> <p>17 voter ID?</p> <p>18 A. No.</p> <p>19 Q. I believe you just mentioned that the National</p> <p>20 Conference of State Legislators may have had a meeting</p> <p>21 about voter ID; is that right?</p> <p>22 A. This meeting is the only one that I remember</p> <p>23 ever having attended, but I think it was ALEC, and it</p> <p>24 certainly was a conference, and the only other one I had</p> <p>25 been to was NCSL, so it's possible it's NCSL, but I</p>



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<p>1 don't think so.</p> <p>2 Q. Did you receive any voter ID or photo ID</p> <p>3 materials from NCSL?</p> <p>4 A. Not that I remember.</p> <p>5 Q. Have you attended any other conferences or</p> <p>6 meetings of groups at which you received any technical</p> <p>7 assistance or policy guidance on voter ID or photo ID?</p> <p>8 A. Not that I can recall.</p> <p>9 Q. What is the current system under current law</p> <p>10 aside from Senate Bill 14 for determining how to</p> <p>11 identify a voter at the polls on election day?</p> <p>12 A. Say that one more time.</p> <p>13 Q. Certainly. Certainly. What's the</p> <p>14 current law -- since Senate Bill 14 has not been</p> <p>15 pre-cleared --</p> <p>16 A. Yeah.</p> <p>17 Q. -- for identifying a voter at the polls on</p> <p>18 election day?</p> <p>19 A. Oh, boy. My understanding is that they simply</p> <p>20 have to have a document of some kind, and I believe --</p> <p>21 and there's a list of documents that are acceptable, and</p> <p>22 I believe there's also a process by which they can do</p> <p>23 some kind of provisional ballot under circumstances</p> <p>24 where they don't have a document. I'm not sure about</p> <p>25 that, but I think that's right.</p>	49	<p>1 people, you know, coming upon a voter registration card</p> <p>2 that was sent to the wrong address, and, you know, I</p> <p>3 don't know if that was -- you know, if that was</p> <p>4 something where there was evidence that it was actually</p> <p>5 used and voted or just making the point that it could</p> <p>6 have been. I don't recall.</p> <p>7 Q. So sitting here today, you can't think of any</p> <p>8 specific instances of hearing of voter registration</p> <p>9 cards being stolen and then used by someone else in an</p> <p>10 election? Is that your testimony?</p> <p>11 A. I can't recall that, no.</p> <p>12 Q. Is the current system for identifying voter at</p> <p>13 the polls effective in your view in identifying voters?</p> <p>14 MR. FREDERICK: Objection. Relevance.</p> <p>15 A. Is it effective?</p> <p>16 Q. In identifying voters.</p> <p>17 A. I don't understand the question.</p> <p>18 Q. Do you think it does the job in identifying</p> <p>19 voters or is it deficient?</p> <p>20 A. In most cases, I mean, there are obviously --</p> <p>21 you know, there are opportunities for fraud that -- that</p> <p>22 the legislation was intended to at least reduce, you</p> <p>23 know, the extent to which that occurred is I guess what</p> <p>24 is up for debate, and -- and I don't know the answer to</p> <p>25 that question, if I answered your question.</p>	51
<p>1 Q. Do you know that when you register to vote, the</p> <p>2 county registrar -- if the county registrar finds you to</p> <p>3 be eligible, mails you a voter registration card in the</p> <p>4 mail?</p> <p>5 A. M-hm.</p> <p>6 Q. Is that one of the forms of identification that</p> <p>7 can be used at the polls on election day?</p> <p>8 A. Yes.</p> <p>9 Q. Are you aware of whether a wide variety of</p> <p>10 photo IDs can be used in polls on election day?</p> <p>11 A. I know there's a wide variety of documents, and</p> <p>12 I presume it includes a number of photo IDs.</p> <p>13 Q. Are there also a number of non-photo IDs under</p> <p>14 current law that can be used?</p> <p>15 A. Yes.</p> <p>16 Q. So you are aware that if, for example, a voter</p> <p>17 lost her voter registration card, she would be able to</p> <p>18 use a lot of different forms of ID at the polls to prove</p> <p>19 identity.</p> <p>20 A. Right.</p> <p>21 Q. Are you aware of any reports of voter</p> <p>22 registration cards being stolen from the mail?</p> <p>23 A. You know, reports -- You know, I want to</p> <p>24 believe, and I can't cite you to any specific comment,</p> <p>25 that I have anecdotally heard, you know, stories of</p>	50	<p>1 Q. Thank you for your testimony. So is it your</p> <p>2 understanding that the current system provides for an</p> <p>3 opportunity for in-person voter impersonation, but that,</p> <p>4 generally speaking, or in the main or on the whole there</p> <p>5 is not a history of that it happened in Texas?</p> <p>6 MR. FREDERICK: Object to the question.</p> <p>7 It mischaracterizes the testimony, but you can answer.</p> <p>8 A. Yeah. I think there is the opportunity for</p> <p>9 fraud, and I'm not saying that it has not occurred. I'm</p> <p>10 saying that we don't know the extent to which it has</p> <p>11 occurred. It's sort of like -- My sense that if we</p> <p>12 have -- the way I've described is we have evidence of a</p> <p>13 few instances. I really couldn't characterize how many,</p> <p>14 but at least some. I think that was conceded even by</p> <p>15 the opponents of the legislation, and the question was</p> <p>16 whether that was the tip of the iceberg or whether it</p> <p>17 was the iceberg.</p> <p>18 Q. What do you believe?</p> <p>19 A. You know, I --</p> <p>20 MR. FREDERICK: Objection. Relevance.</p> <p>21 A. My guess is probably somewhere in between. In</p> <p>22 other words, it's not -- it would be unreasonable to me</p> <p>23 to presume that we know -- what we know is all that has</p> <p>24 ever occurred. That doesn't make sense. On the other</p> <p>25 hand, I don't believe that it's likely that it is --</p>	52



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<p>1 what we know is the tip of a huge iceberg where, you  2 know, people are being bussed in to -- to vote illegally  3 in huge quantities. I don't believe that's likely the  4 case either. That's my opinion.</p> <p>5 Q. So I want to break that down into sort of what  6 you know has happened in terms of -- and we're talking  7 about in-person voter impersonation at the polls.</p> <p>8 A. Right.</p> <p>9 Q. Because these laws are designed solely to  10 address that issue; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. So what -- can you provide me with any other  13 testimony about the basis for the known in-person voter  14 impersonation in Texas, and we'll talk about the public  15 record in a bit, but I want to draw your memory.</p> <p>16 A. You know, I'm just not going to remember it  17 all, and, you know, it certainly is true, you know,  18 that -- that many of the -- or some of the allegations  19 of voter fraud could easily be shown to be something  20 other than voter fraud, and Rafael Anchia can fill you  21 in in that regard in great detail.</p> <p>22 And so the question was how many instances  23 there were that that is not the case, and, you know -- I  24 mean, you know, and what is evidence because we had a  25 lot of -- you know, we had some testimony from certain</p>	53	<p>1 in Tarrant County which has made the newspaper of --  2 of -- I think it was a Democratic precinct chairperson  3 who somebody voted for somebody else using their voter  4 registration card. It was in the newspaper last week.  5 Obviously, that was not a part of our -- our discussions  6 in 2009.</p> <p>7 So, you know, I think the bottom line is  8 that Rafael -- people like Rafael -- Rafael certainly is  9 the one who is most knowledgeable in opposition to the  10 legislation, and, you know, I think their position is  11 that it's infrequent.</p> <p>12 Q. And is that -- is that your position as well?</p> <p>13 I mean, are you aware of credible evidence, convictions,  14 something where you know for sure that this was  15 in-person voter impersonation that you can testify about  16 today?</p> <p>17 A. My presumption is that you are a fool or you  18 are uninformed if you -- if you are willing to commit a  19 felony in order to add a single vote to the candidate of  20 your choice, and so the question is how many fools are  21 there out there. And, you know -- and you know -- And,  22 I, you know -- again, I think I've answered that  23 question. You know, more than the actual cases that we  24 are aware of and not an epidemic.</p> <p>25 Q. But in your view your testimony is it would not</p>	55
<p>1 individuals, you know, as a part of our hearing that  2 would say things like, you know, I was working at the  3 polls, and I personally witnessed the same person vote  4 twice. You know, is that evidence of voter fraud? I  5 suppose it is. It was his testimony, and so we had  6 instances like that.</p> <p>7 There was, I know, a big debate at that  8 time about something that was going on in south Texas  9 that was in the newspapers a lot where there may have  10 been -- at least the allegation was that there was some  11 sort of -- not just, you know, one person doing  12 something on their own, but some kind of actual  13 coordinated effort at voter fraud, but, again, I don't  14 know that that was clearly -- by the time we voted the  15 bill out of committee that it was clear what the -- what  16 had actually happened there.</p> <p>17 Q. Was that related to in-person voter  18 impersonation?</p> <p>19 A. I believe so.</p> <p>20 Q. Were there convictions that came out of that?</p> <p>21 A. I don't recall. I can't even tell you. I  22 think it was like a school board election in south  23 Texas, but it was happening -- or it was in the  24 newspaper at the time we were considering the bill in  25 2009. Of course, this last week, there was an instance</p>	54	<p>1 be very rational for an individual to engage in this  2 behavior, so to that extent --</p> <p>3 A. It seems to me that the penalty in relation to  4 the benefit is pretty severe, and I can't -- you know,  5 the fear -- you know, the question is do they really  6 understand the consequences. It is hard for me to  7 imagine people doing it, if they did. But, you know,  8 some people are really into politics.</p> <p>9 Q. So we talked about what -- what you know in  10 terms of things that have happened in the past in terms  11 of in-person voter impersonation, but the unknown future  12 potential for in-person voter impersonation, what is  13 you're -- the basis of saying that this bill is  14 necessary for that threat?</p> <p>15 A. I think the argument in favor of the bill is --  16 is that we are -- we have, you know, a number of very,  17 very close elections and that because of that, we've had  18 elections decided by a handful of votes and that without  19 regard to the extent to which it occurs, it's important  20 to do what you can do to ensure that it does not occur.  21 And, obviously, you know, the challenge is the tension  22 between the goal on the one hand of voter security and  23 integrity of the ballot box and voter access on the  24 other hand.</p> <p>25 Q. And getting back to my earlier question that</p>	56



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<p>57</p> <p>1 I'm not sure you fully answered, what is the problem 2 with the current system for identifying the voter at the 3 polls that you could identify sitting here today? 4 A. Just, you know, the -- the fact that that 5 precinct chairperson could simply hand their voter 6 registration card to somebody else, and they could go 7 vote for them. Through a perfectly -- It's just very 8 difficult to imagine how you would prevent that from 9 happening if somebody gets ahold of somebody else's card 10 and they're confident that that person's not going to go 11 back, and I think that's what happened in this instance 12 is the actual person later went and voted using their 13 card, and so that same voter registration card had been 14 voted twice, which is how they discovered it.</p> <p>15 Q. How would that work in Texas? I am not a 16 registered voter in Texas, but when you go in to vote, 17 don't you sign the poll book --</p> <p>18 A. Yes.</p> <p>19 Q. -- when you present your card? So it would -- 20 this bill would not prevent someone from voting twice 21 because they've already selected the signature once of a 22 voter who comes in with a particular card and indicates 23 that he or she is that voter?</p> <p>24 A. Right. I don't think the concern is with -- 25 not limited to someone voting twice. It is someone</p>	<p>59</p> <p>1 communication from the election division in 2 September 2010 to you? Do you recall that document? 3 A. No, but it's -- it sounds like it was -- we had 4 a hearing -- an interim hearing. I presume that some 5 questions were asked during the interim hearing and 6 probably Ann McGeehan followed up with some kind of a 7 communication to the entire committee, I presume.</p> <p>8 MS. WESTFALL: Mr. Frederick, I would ask 9 that pursuant to the May 28th order indicating that 10 communications from agencies to legislators are in that 11 order with regard to lieutenant governor can be 12 produced. I'd ask that this document be produced to us 13 because I do not believe it's covered by legislative 14 privilege. Will you take that under advisement?</p> <p>15 MR. FREDERICK: I'm happy to look at the 16 order and take it under advisement, but I cannot 17 represent now that we will.</p> <p>18 Q. Thank you. And turning to the next page at the 19 bottom, Texas 00266627 --</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. -- who was Erica Grigg?</p> <p>22 A. She is -- This was my -- one of my employees 23 during two thousand -- I'm trying to remember when she 24 started, but certainly 2011.</p> <p>25 Q. Is she still in your employment?</p>
<p>58</p> <p>1 that's not a legal voter using the legal voter's card to 2 vote. And, obviously, you know, nothing is foolproof, 3 and the voter ID bill is not foolproof. You can, you 4 know, go get a fake photo ID just if you, again, are 5 that into politics, but it -- it presumptively makes it 6 more difficult to do.</p> <p>7 (Exhibit US-101 marked.)</p> <p>8 Q. Thank you. We're going to move on to a 9 different topic. Could you mark this as US-101? You've 10 been handed what's been marked US-101. Do you recognize 11 this document?</p> <p>12 A. No.</p> <p>13 Q. I will represent to you that this is a 14 privileged log that was produced by your attorney for 15 the state last night concerning documents that have been 16 withheld based on privilege that were in your files that 17 were responsive to the documents we talked about 18 earlier, US-100, the amended notice of your deposition. 19 If you could take a look, I'm going to ask you some 20 questions about this document. Unfortunately, it's not 21 paginated, but I will try to direct you through the 22 document based on the Bates numbers on the left-hand 23 column. If you could turn to the second page. 24 Do you see at the bottom or the second 25 entry Texas 0026616? It indicates that there was a</p>	<p>60</p> <p>1 A. No.</p> <p>2 Q. Do you believe that the date, May 24, 2012, the 3 date of the document is incorrect?</p> <p>4 A. No, she would have -- Yeah. Oh, yeah, yeah, 5 that's definitely incorrect. Yeah.</p> <p>6 Q. What year do you think this was created?</p> <p>7 A. Well, let me see what it is. What is Erica 8 Grigg? She's the sender?</p> <p>9 Q. Yes.</p> <p>10 A. The author? That must be the wrong date. I 11 can't imagine that something happened last week. 12 Erica's not in my office.</p> <p>13 Q. I see. Do you think this was pertaining to 14 voter ID -- a bill that you were drafting relating to 15 voter ID?</p> <p>16 A. I presume. It must have been -- It must have 17 been May of 2009 is all I can imagine, if that was the 18 case. Oh, no, it could have been -- You know, I did go 19 ahead and prepare a bill and file it in the 2011 20 session. I don't know. That date doesn't make any 21 sense either way.</p> <p>22 Q. Turning your attention again -- These are not 23 paginated. Perhaps your counsel can help you find Texas 24 266717, about five pages in. Actually, I don't need to 25 direct you there. Are you familiar with the Georgia</p>



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<p>1 photo ID law?</p> <p>2 A. I have, you know, certainly in the midst of</p> <p>3 handling this issue looked at in general other states'</p> <p>4 approaches to photo ID and Georgia would have been one</p> <p>5 of them. You know, I have a sense that they have a --</p> <p>6 if I'm recalling correctly, a pretty strict photo ID</p> <p>7 requirement. They are one of the states that does.</p> <p>8 Q. Do you know whether it's as strict as Texas</p> <p>9 Senate Bill 14?</p> <p>10 A. I don't know the difference, no.</p> <p>11 Q. Could you tell me who Charles Foster is?</p> <p>12 A. No.</p> <p>13 Q. Directing your attention now a few more</p> <p>14 documents in to Texas 00266838. Perhaps your counsel</p> <p>15 can help you find it.</p> <p>16 A. Yeah. What is the question?</p> <p>17 Q. I want to ask you if you know what these</p> <p>18 communications were about between -- from Charles Foster</p> <p>19 to what appears to be your office and your staff.</p> <p>20 A. No, I don't.</p> <p>21 Q. Is he a staff person in your office?</p> <p>22 A. I don't think so.</p> <p>23 Q. Is he a constituent?</p> <p>24 A. I don't know. Yeah -- No. No, I don't know.</p> <p>25 Don't know who that is.</p>	61	<p>1 MS. WESTFALL: Take that under advisement?</p> <p>2 MR. FREDERICK: I will take it under</p> <p>3 advisement. I don't necessarily agree with your</p> <p>4 interpretation, but I understand the position. I'll</p> <p>5 take it under advisement.</p> <p>6 MS. PERALES: My copy of the order is</p> <p>7 missing the pages, so I would have given it to you to</p> <p>8 read, but I just can't find it.</p> <p>9 MS. WESTFALL: And I won't give you mine</p> <p>10 because of my work product.</p> <p>11 MR. FREDERICK: Not a problem.</p> <p>12 Q. (BY MS. WESTFALL) Turning your attention now to</p> <p>13 Texas 00266984 of this document, do you see that this</p> <p>14 document and those that follow refer to draft copy of</p> <p>15 Power Point presentation on voter ID?</p> <p>16 A. Yes.</p> <p>17 Q. Did you finalize these Power Points and present</p> <p>18 these remarks publicly?</p> <p>19 A. Yes.</p> <p>20 Q. Mr. Frederick, I would ask that -- likewise,</p> <p>21 that these be produced since they are public remarks</p> <p>22 that Mr. Smith has made.</p> <p>23 Where did you make these remarks,</p> <p>24 Mr. Smith?</p> <p>25 A. Just among Republican party groups in Tarrant</p>	63
<p>1 MS. WESTFALL: Mr. Frederick, I would ask</p> <p>2 that to the extent Mr. Foster is a constituent and not</p> <p>3 staff and there's no basis for any legislative privilege</p> <p>4 pursuant to the court's May 28th order, that you produce</p> <p>5 this correspondence.</p> <p>6 MR. FREDERICK: The May 28th order is the</p> <p>7 order that involves the lieutenant governor's privileged</p> <p>8 log?</p> <p>9 MS. WESTFALL: Yes, but it's equally</p> <p>10 applicable. There is a footnote about constituent</p> <p>11 correspondence, and the document number for the order is</p> <p>12 154. It's the one we received Sunday or Monday night.</p> <p>13 MR. FREDERICK: I recall the footnote.</p> <p>14 I'm happy to take it under advisement, but as I recall</p> <p>15 the footnote, I'm not sure totally sure that it applies,</p> <p>16 but I'm happy to look at it.</p> <p>17 MS. WESTFALL: Well, I happy to represent</p> <p>18 now, "Neither a constituent letter nor a response is</p> <p>19 privileged" is the first sentence in Footnote 6.</p> <p>20 "Questions to the lieutenant governor and his staff</p> <p>21 about constituent communications impact on thinking and</p> <p>22 motivations are privileged." So, clearly, the court is</p> <p>23 saying constituent letters and responses are not</p> <p>24 privileged, so we ask that they be produced.</p> <p>25 MR. FREDERICK: Okay.</p>	62	<p>1 County. That was after the campaign where I was</p> <p>2 attacked for intentionally killing the bill, and I took</p> <p>3 my limited dog and pony show out to the groups to help</p> <p>4 them understand what happened because, obviously,</p> <p>5 it's -- the argument was procedural, and so it just</p> <p>6 required an hour of their time really to help them</p> <p>7 understand what happened.</p> <p>8 Q. And it does appear that you made a number of --</p> <p>9 based on this privilege log, you made a number of these</p> <p>10 presentations in May 2010, June 2010, various times in</p> <p>11 June 2010, April 2010. Does that sound correct?</p> <p>12 A. It sounds correct. It would have been after</p> <p>13 the primary in March of 2010, yes.</p> <p>14 MS. WESTFALL: Thank you. Mr. Frederick,</p> <p>15 I would ask that all of these Power Points be produced</p> <p>16 since they pertain to publicly disseminated speech and</p> <p>17 remarks to constituents that were made by Mr. Smith to</p> <p>18 which he just testified.</p> <p>19 MR. FREDERICK: So you are asking us to</p> <p>20 produce the drafts that were not publicly discussed? Is</p> <p>21 that what you are asking?</p> <p>22 MS. WESTFALL: If he made the remarks and</p> <p>23 he relied upon a Power Point, I would ask for that Power</p> <p>24 Point because that is clearly in the public domain</p> <p>25 that -- remarks that he made to Republican groups. It's</p>	64



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1 consider it under the order. 2 MS. WESTFALL: Thank you. 3 Q. (BY MS. WESTFALL) What was the original impetus 4 for photo ID in Texas? 5 A. Original impetus? Help me. 6 Q. In the two thousands. Why did Texas become 7 interested in photo ID? 8 A. I don't really understand the question. Why 9 did Texas become interested? Texas who? 10 Q. When did you first hear about photo ID in 11 Texas? 12 A. Oh, gosh. I think there was legislation, you 13 know, going back to the late '90's. I think, if I 14 recall correctly, you know, Debra Danberg was involved 15 in the first bill that I'm aware of which requires for 16 the first time that you produce a document, which is 17 current law. Prior to that, you didn't have to produce 18 a document. 19 Q. Was there a time in the mid-2000's that 20 interest in photo ID developed in the Texas House? 21 A. In photo ID? 22 Q. Yes. 23 A. Yeah. I think that whenever it kind of became 24 a national issue that it became a political issue in the 25 State of Texas.	69 1 the term bus loads saying I don't believe that that 2 occurs, I think. 3 Q. But was there a belief that bus loads of 4 individuals were crossing the border and participating 5 in elections? 6 A. I think there clearly are a lot of people that 7 have the impression or belief that -- that -- that 8 nonlegal citizens are voting in our elections in some 9 significant quantity. 10 Q. Do you believe that that was motivating some of 11 the movement to enact photo ID in Texas? 12 A. Was the grassroots belief in that? Sure. Yes. 13 Q. Thank you. I'm going to hand you what's been 14 previously marked as US-44. You've been handed what's 15 been previously marked as United States 44. Do you 16 recognize this document? 17 A. No. 18 Q. You don't? 19 A. No, I don't remember it. 20 Q. Okay. Were you involved in any legislation in 21 2005 pertaining to photo ID? 22 A. 2005? 23 Q. Yes. 24 A. I probably voted for it if it -- I believe it 25 probably was voted on -- on the floor.
1 Q. And you believe it was based on a national 2 movement and nothing that related to any circumstances 3 going on in the state; is that correct? 4 A. Yeah. I think it was an issue in other states 5 and, you know, just through these legislative -- or 6 through any means, numbers, et cetera, we looked at what 7 other states are doing and decided whether or not we 8 think we should do likewise, and, obviously, this one 9 was, you know, something that had a lot of political 10 support at the grassroots level. 11 Q. Do you understand what the motivation was at 12 the grassroots level for wanting photo ID? 13 A. The motivation at the grassroots level? 14 Q. Yes. 15 A. Gosh. That's going to vary by human being. 16 Q. I believe you testified earlier about kind of a 17 vision and talking about bus loads -- 18 A. Yes. 19 Q. -- of people coming over the border. 20 A. Right. 21 MR. FREDERICK: I'll object to the 22 mischaracterization of testimony. 23 Q. Am I mischaracterizing your testimony, 24 Mr. Smith? 25 A. I don't know what you are saying. I did use	70 1 Q. Can you look at the final page of this document 2 to see the effective date? 3 A. Yeah. I thought it was later than that. 2011. 4 Q. Have you been -- I'm sorry. You've been passed 5 the wrong exhibit. They were mixed up. 6 A. That's why we were confused. 7 MS. WESTFALL: Let's go off the record for 8 one second. 9 (Recess from 12:04 p.m. to 12:05 p.m.) 10 (Exhibit US-102 marked.) 11 Q. (BY MS. WESTFALL) We are back on record. 12 You've been handed what's been marked US-102. Do you 13 recognize this document? 14 A. You know, I don't recognize it in terms of 15 recalling having looked at it before. 16 Q. Do you know who sponsored it? 17 A. It looks like it was Denny -- Mary Denny, I 18 presume, was the author. 19 Q. Were you involved in the development of this 20 bill before it was filed? 21 A. I don't believe so, no. 22 Q. Do you have any familiarity with this 23 legislation? 24 A. Yes. I was on the committee that session. I mean, I think it's just one of many different versions



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<p>1 of the voter ID bill that was considered by the  2 legislature during the decade.  3 Q. Could you take a look at Page 4 and just review  4 the document, the proof of identification?  5 A. What do you want me to review on Page 4?  6 Q. Just Page 4. Are you familiar with a list of  7 ID that is listed there? I just want to see if I can  8 jog your memory a little bit.  9 A. Yeah. My recollection is that this bill  10 probably is not a -- I don't know. I could be wrong.  11 I believe I'm correct that the House never passed a hard  12 photo ID bill until 2011. So all of these prior  13 versions at least that came off the floor before that  14 had included two non-photo IDs.  15 Q. And is that what is indicated in US-103,  16 HB1706?  17 A. I mean this has -- this bill has a list of  18 photo IDs and it has a list of non-photo IDs. The  19 following documentation is acceptable as proof of  20 identification of this chapter, and it includes a number  21 of non-photo IDs.  22 Q. Are you familiar off the top of your head with  23 the IDs allowable under Senate Bill 14?  24 A. No.  25 Q. Do you know what the purpose of House Bill 1706</p>	73	<p>more difficult to commit voter fraud.  2 Q. Is that based on any communications you had  3 with anyone?  4 A. It's based on my -- based on probably more  5 likely than that what I read in the newspaper and stuff  6 about what they were saying about why they were doing  7 it.  8 Q. Are you aware of any communications concerning  9 the forms of allowable ID in House Bill 1706?  10 A. Am I aware of any communication about the forms  11 of ID?  12 Q. Yes, sir.  13 A. No, I would not have been actively involved in  14 the legislation at that time. I would have been just a  15 member on the floor voting.  16 Q. Do you know who drafted this language for the  17 bill?  18 A. No.  19 Q. Do you know what --  20 A. Probably ledge council.  21 Q. Was there a model that it was based on?  22 A. I don't know.  23 Q. Was House Bill 1706 in part designed to prevent  24 noncitizens from voting in the view of its authors and  25 supporters?</p>	75
<p>1 was?  2 A. The purpose? I'm not sure I understand what  3 you mean by purpose. Whose purpose?  4 Q. The legislature's.  5 A. The legislature?  6 Q. Well, the bill's sponsors, authors and  7 supporters, what did they intend to do with this bill?  8 MR. FREDERICK: Let me just object on the  9 basis of privilege. To the extent that this is asking  10 for you to reveal your own or any other legislator's  11 thoughts or mental impressions about this bill or any  12 communications you had with another legislator about the  13 bill, I would instruct you not to answer, but if you can  14 identify the purpose of the bill without doing that, you  15 may do so.  16 A. I don't know. I'm a little confused in terms  17 of trying to identify the intent of a bunch of people.  18 I don't know how to do that.  19 Q. Well, you're a legislator and you sit in a body  20 that acts collectively. So on the basis of your role on  21 the legislature and your expertise and service in the  22 House, I would ask if you have any testimony about the  23 purpose of the bill's sponsors, authors and supporters  24 in advancing this bill.  25 A. I presume that their purpose was to make it</p>	74	<p>MR. FREDERICK: Object only to the extent  2 that it calls for subjective intent of any author or  3 supporter. If you -- If this calls for you to reveal  4 any communications with those individuals or other  5 legislators, I'd instruct you not to answer on the basis  6 of privilege. If you can answer without doing that, you  7 may do so.  8 A. I think, you know, the purpose was to prevent  9 any person who is not legally authorized to vote from  10 voting and that would include citizens and noncitizens.  11 Q. And how did HB1706 serve that purpose?  12 A. If I -- Without really looking at it and  13 reading every word of it, I believe that it probably  14 required you to have a back up non-photo ID because I  15 believe in general, that's what the legislation did  16 until 2011.  17 Q. Yes. And I will represent to you that HB1706  18 allowed for both photo and two forms of non-photo ID.  19 I'm sure your counsel won't disagree with that  20 characterization.  21 A. Right. So it's just -- you know, instead of  22 being able to just take somebody else's voter  23 registration card and with impunity hand it to somebody  24 and vote and leave, you have to go to the trouble or if  25 you find a voter registration card or stumble on a voter</p>	76



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77 <p>1 registration card, you probably are not going to stumble 2 on some other identifying document, and so it just -- it 3 makes it, again, somewhat more difficult to commit voter 4 fraud by having to require two forms of non-photo ID. 5 Q. And how does that prevent people who are not 6 lawfully in the United States from participating in 7 elections? 8 MR. FREDERICK: I'd object on the basis of 9 privilege. To the extent that this calls for your own 10 mental impressions, thought processes about this bill or 11 any communications related to the bill with other 12 legislators, if you can answer the question without 13 doing that, you may do so. 14 THE WITNESS: My own thought processes? 15 MR. FREDERICK: Your thought processes 16 specific to this bill at the time it was pending. If 17 you would have to kind of go back -- 18 THE WITNESS: I don't recall what my 19 thought process was at the time of the bill, so there's 20 no danger. 21 MR. FREDERICK: Then I think we're safe. 22 But to the extent it would require you to reveal a 23 communication from another legislator about this bill, I 24 would caution you just not to reveal that, but you can 25 answer if you can do so without doing that.</p>	79 <p>1 without being a US citizen if you were a permanent 2 resident, for example, or here on another type of visa; 3 is that correct? 4 A. I don't know. 5 Q. You could have a student ID card without being 6 a US citizen; is that right? 7 A. I presume. 8 Q. And may one obtain a license to carry a 9 concealed handgun in the State of Texas without being a 10 US citizen? 11 A. I don't know. 12 Q. So why is it that you testified earlier that 13 this bill, 1706, prevents noncitizens from participating 14 in elections if citizenship is determined at the voter 15 registration stage and one may obtain these documentary 16 proof of ID without being a US citizen? 17 MR. FREDERICK: Object to the extent it 18 mischaracterizes prior testimony. Object as compound. 19 You may answer. 20 A. I'm not clear on the extent to which there is 21 any ability to verify on the voter registration card 22 when someone says they are a citizen, that they are in 23 fact a citizen. My recollection, which could be 24 inaccurate, is that there is nothing that you really 25 are. It's obviously a crime to claim to be a citizen</p>
78 <p>1 A. You know, again, I think it would make it more 2 difficult for that person, whether they're a resident or 3 not a resident or a legal citizen or not a citizen, 4 to cast a fraudulent vote because they would have to 5 just go through more trouble and more difficulty in 6 obtaining the information they would need to -- to go 7 and claim to be somebody that they are not. 8 Q. So doesn't one attest to being a US citizen 9 when one registers to vote in Texas? 10 A. I believe so. 11 Q. It's on the registration application; is it 12 not? 13 A. I believe so. 14 Q. So that's when citizenship is determined, 15 correct? 16 A. I believe so. 17 Q. In House Bill 1706, isn't it true that today 18 you can obtain -- or at the time the bill was considered 19 in Texas, you could obtain a driver's license without 20 being a US citizen; is that correct? 21 A. I believe -- I believe that's correct. 22 Q. And you could obtain a military ID card without 23 being a US citizen; is that correct? 24 A. I don't know about that. 25 Q. And you could certainly have an employee ID card</p>	80 <p>1 and not be a citizen, but there is no formal process by 2 which they go and check and make sure that people who 3 claim to be citizens are in fact citizens. I don't know 4 if that answers your question at all. 5 Q. So assuming a noncitizen manages to get on the 6 voters rolls, as you described, and the individual 7 obtains a driver's license -- 8 A. Right. 9 Q. -- lawfully. 10 A. Right. 11 Q. Would this bill, 1706, prevent that individual 12 from voting on election day? 13 MR. FREDERICK: Object. Calls for 14 speculation. You can answer. 15 A. No, because they -- they -- they could vote 16 with a photo ID under this legislation precisely the 17 same way they could under prior law. 18 Q. Thank you. Are you aware of any conversations 19 with legislators about the purpose of House Bill 1706 or 20 other photo ID in 2005 as part of the purpose being to 21 prevent noncitizens from voting? 22 MR. FREDERICK: Object on the basis of 23 privilege. The question as phrased asked if you were 24 aware of any conversations. I believe you can testify 25 to the extent there were or were not. I would caution</p>



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81 1 you not to reveal the substance of any communication 2 with another legislator. 3 A. I don't recall any conversations that I would 4 have had with anybody in 2005. 5 Q. Regarding noncitizen voting? 6 A. Regarding anything involving voter ID. 7 Q. Are you familiar with the legislators who 8 opposed House Bill 1706? 9 A. Am I familiar? I mean, most Democrats. I 10 don't have specific recollections of individual 11 conversations with anybody. 12 Q. Do you know what their concerns were about the 13 bill? 14 MR. FREDERICK: I'll object on the basis 15 of privilege. To the extent this would require you to 16 reveal any concerns expressed to you by another 17 legislator in a conversation, that would be privileged. 18 If you can answer without revealing that, you may do so. 19 MS. WESTFALL: Mr. Frederick, can you 20 identify any bill opponents who have invoked the 21 legislative privilege affirmatively in this case? 22 MR. FREDERICK: I don't understand the 23 point of that question. 24 MS. WESTFALL: There's no legislative 25 privilege on communications from bill opponents to	83 1 disclosed because if it were, it would violate the 2 legislative privilege. 3 MS. WESTFALL: Are you instructing him not 4 to answer? 5 MR. FREDERICK: I'm instructing him not to 6 answer to the extent he would have to reveal the 7 substance of any communications. 8 THE WITNESS: I can save you both a lot of 9 time. 10 MS. WESTFALL: I'm grateful. 11 A. I don't remember any such conversation. 12 Q. I'm grateful. Are you aware of any action 13 taken by any legislature in 2005 to address any concerns 14 from bill opponents? 15 MR. FREDERICK: I'm going to object on the 16 basis of privilege. You may testify whether you or are 17 not aware, but you may not disclose the thought process 18 of any legislator as to why they did something. That 19 would be privileged. 20 A. No. What I will -- What I will recall is in 21 general the arguments that were made that were a matter 22 of public record and newspapers, et cetera, in 2005. I 23 will not recall any specific conversations with anybody 24 on this particular bill. And I know the reason that it 25 was a -- it was a less strict version of voter ID at
82 1 Representative Smith. 2 MR. FREDERICK: He's asserting privilege. 3 MS. WESTFALL: I'm asking about 4 communications he received from bill opponents. 5 MR. FREDERICK: Well, I believe you've 6 asked him for the substance of a communication from a 7 bill opponent. First of all, we don't know who they 8 are, so I don't know that they have waived privilege, 9 but, also -- 10 MS. WESTFALL: Who has affirmatively 11 invoked legislative privilege? Who has opposed any 12 photo ID bill in Texas? Who have you identified in your 13 correspondence with the Attorney General? 14 MR. FREDERICK: I don't know. That 15 question is irrelevant because Representative Smith has 16 invoked legislative privilege. To the extent anyone 17 communicates with him about pending legislation, that is 18 privileged. 19 MS. WESTFALL: Not the content of what 20 they said to him. 21 MR. FREDERICK: Absolutely it is. My 22 position -- Our position is there are two people who -- 23 at least two people who hold the privilege, and if one 24 of those people has not waived the privilege, that 25 conversation remains privileged and should not be	84 1 this time was because the Senate was still a relatively 2 moderate body, and there simply was no ability to get a 3 stricter bill out of the Senate, and, therefore, there 4 was no attempt to obtain a stricter bill out of the 5 House. That's my belief. 6 Q. Are you aware of any analysis that was 7 conducted in 2005 related to who had these forms of ID 8 and who didn't have those forms of ID in 1706 or any 9 other photo ID bill? 10 A. No. 11 Q. Are you aware of any attempt to determine the 12 impact of House bill 1706 or other photo ID legislation 13 on minority voters? 14 A. No. 15 Q. Did House Bill 1706 pass in the House? 16 A. I believe so. 17 Q. Was it referred to the Senate committee on 18 state affairs? 19 A. I don't know. 20 Q. Did it get passed in the Senate? 21 A. I don't think so. I don't think the bill ever 22 passed in the Senate. Well, I could be wrong, but I 23 don't think it passed in the Senate until 2009. 24 Q. Would election bills ordinarily that pass in the House be referred to the State Affairs Committee in



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1 Senate? 2 A. I don't know. 3 Q. Is that the committee that would handle 4 election bills ordinarily? 5 A. In the Senate, I don't know. 6 Q. It wouldn't be the committee as a whole, would 7 it? 8 A. It could be. I mean, it's just their choice. 9 My understanding is the rules allow them to do either. 10 MS. WESTFALL: Okay. Great. Well, do 11 folks want to take a break for lunch? It's 12:30. Or 12 we could do another half an hour. It's your choice. 13 (Recess from 12:30 p.m. to 1:12 p.m.) 14 MS. WESTFALL: During the break, I had a 15 chance to consult with my colleagues about the subject 16 matter waiver invocation of legislative privilege issue, 17 and I want to advise Representative Smith and you, 18 Mr. Frederick, that the United States will not advance 19 any subject matter waiver argument if Representative 20 Smith chooses to answer and decides not to invoke 21 legislative privilege with regard to individual specific 22 questions that I may ask in today's deposition. So I 23 wanted to advise you of that position and advise 24 Representative Smith that if there are particular 25 questions that you -- for which you would want -- you	85	1 in 2011 was always generally similar in that it 2 effectively moved from one form of non-photo ID to two 3 forms of non-photo ID. 4 Q. Okay. Would you mark this as Exhibit 28, 5 previously marked? Representative Smith, you've been 6 handed what's been previously marked as US Exhibit 28. 7 Do you recognize this document? 8 A. No. 9 Q. Did you serve on the House elections committee 10 in 2007? 11 A. No. 12 Q. Did you have any involvement with any 13 legislation related to photo ID in 2007? 14 A. Other than voting for it on the floor, no. 15 Q. Thank you. Are you aware of any concerns 16 raised during the development of House Bill 218 17 regarding the impact of the bill on Hispanic voters? 18 MR. FREDERICK: On the basis of 19 legislative privilege to the extent the question 20 requires you to reveal the contents of any communication 21 from a legislator or a legislative staff member about 22 the bill, I'll instruct you not to answer on the basis 23 of privilege. However, if you can answer without 24 revealing that, you may do so. 25 A. I think my -- I mean, with the exception of the	87
1 would like to answer and not invoke the privilege, that 2 would be our legal position. 3 MR. FREDERICK: I appreciate that. I have 4 also talked about this, and I have -- it is my 5 understanding that despite your kind offer to not 6 advance subject matter waiver arguments, it is our 7 position that that still would not -- that would not 8 protect us from the court ruling that something was in 9 fact a waiver, either subject matter or complete, and so 10 I cannot advise Representative Smith to -- to 11 selectively waive or selectively answer privileged 12 questions, and I will continue to instruct him to assert 13 privilege consistent with my understanding that he is 14 still asserting privilege. 15 MS. WESTFALL: And your client understands 16 that it's his to invoke, correct? 17 MR. FREDERICK: Oh, yes, yes. I think so. 18 THE WITNESS: Yes. 19 MS. WESTFALL: That hasn't been made clear 20 by these interesting colloquies. 21 Q. (BY MS. WESTFALL) Representative Smith, are you 22 familiar with the voter ID bill that was introduced in 23 2007? 24 A. No, not other than generally an understanding 25 that the legislation that preceded the bill that passed	86	1 bill passed almost unanimously, if not unanimously, in I 2 think 1999, which required documentation of some kind 3 for the first time, I think that every time the 4 legislation has been considered there have been concerns 5 expressed by opponents of that nature, if that answers 6 your question. 7 Q. And who are the opponents? 8 A. MALDEF, NAACP, Democratic party. Those are the 9 ones that I remember. 10 Q. What is the basis of their concern that bills 11 like 218 will have an adverse impact on minority voters? 12 MR. FREDERICK: Let me interpose a 13 cautionary objection. I don't believe that this is 14 actually calling for privileged material, but to the 15 extent of identifying a basis of concern would reveal 16 the communication from another legislator, I would 17 instruct you not to reveal that, but you can answer -- 18 A. Yeah. That would only be communications that 19 I've read in the papers and public information, and that 20 is that somehow any additional burden that you place on 21 a voter is going to disproportionately fall on minority 22 voters. 23 Q. What -- What's the reason for that? 24 A. The reason for what? 25 Q. For believing -- For bill opponents believing	88



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<p>1 that it will disproportionately fall on minority voters.  2 A. I don't know that I really understand the  3 reason for believing that in instances where you're  4 simply going from one non-photo ID to two non-photo IDs  5 because in those instances, I think you are talking  6 about documentation that is always currently in the  7 possession of every legal voter. So I don't really  8 understand the argument in that instance.  9 Q. So just so I understand your testimony, your  10 testimony is that with regard to legislation where both  11 a photo ID and two forms of non-photo ID are allowable,  12 it is your view that that would not disproportionately  13 fall upon minority voters based upon your knowledge?  14 A. Yeah. I don't understand the argument that it  15 would really because you're talking about requiring only  16 documentation that is currently in the possession of  17 every legal voter as far as I know because the list is  18 so extensive that I just have never ever seen any  19 evidence of any kind that any legal voter doesn't  20 currently have in their possession what they would need  21 to vote which is different than requiring a photo ID, so  22 I don't understand that argument. There may be one that  23 I am not aware. I know there is because they've made  24 it, but I don't understand it.  25 Q. Were you present at any of the legislative</p>	<p>89</p> <p>1 if -- I would be surprised if there were not public  2 statements by these individuals at the top of this bill  3 listing that -- as being one of the benefits of the  4 bill.  5 Q. Were you present on the House floor debate of  6 House Bill 218?  7 A. I don't recall, but I probably was.  8 Q. Do you recall Representative Betty Brown stated  9 on the House floor that it was "designed to keep illegal  10 aliens, noncitizens and other people otherwise not  11 qualified from voting"? Does that sounds familiar?  12 A. It doesn't surprise me, but I don't recall it.  13 Q. Are you aware of any nonpublic private  14 conversations where legislators indicated that House  15 Bill 218 was designed to prevent noncitizens from  16 voting?  17 MR. FREDERICK: On the basis of privilege,  18 I think you may answer. I'm sorry.  19 A. Conversations with legislators I think is what  20 she was asking.  21 MS. WESTFALL: Were you present during  22 conversations -- This is a foundational question,  23 Mr. Frederick.  24 MR. FREDERICK: Can you repeat the  25 question, please?</p>
<p>1 public debates on HB218 on the floor?  2 A. I'm sure I was. I don't recall it, but I'm  3 sure I was.  4 Q. Are you aware of any analysis or reports that  5 were generated to determine whether House Bill 218 or  6 other photo ID laws -- I mean, bills introduced in 2007  7 would have a disparate impact on minority voters?  8 A. No.  9 Q. And like HB1706, was HB218 in your view in part  10 designed to prevent noncitizens from voting in  11 elections?  12 A. I think it was designed to prevent any voter  13 who's not legally entitled to vote from voting including  14 noncitizens.  15 Q. With regard to how that would work with regard  16 to House Bill 218, is your testimony the same as regard  17 to House Bill 1706?  18 A. Yes, as far as I know.  19 Q. Did the -- any of the supporters of House Bill  20 218, including legislators, publicly indicate that the  21 bill is designed to prevent noncitizens from voting?  22 A. I'm sure they probably did.  23 Q. Do you recall -- I'm sorry. I didn't mean to  24 interrupt you?  25 A. No. I think they -- You know, I don't know</p>	<p>90</p> <p>1 Q. (BY MS. WESTFALL) I certainly could. Were you  2 present during any private conversations where  3 legislators indicated that House Bill 218 was designed  4 to keep noncitizens from voting?  5 MR. FREDERICK: Object on the basis of  6 privilege. The question implies the substance of the  7 conversation, so I'd instruct you not to answer.  8 Q. Are you following your counsel's advice?  9 A. Yes.  10 Q. If House Bill 218 was implemented, do you think  11 it would have prevented noncitizens from voting?  12 A. I'd have to read it more carefully than I have  13 read it today, but if it is, as I understand it, to be a  14 piece of legislation that simply goes from requiring a  15 minimum threshold of one non-photo document to two  16 non-photo documents, then I think it makes it more  17 difficult for a -- for any voter who's not legally  18 entitled to vote to vote.  19 Q. I believe --  20 A. Somewhat more difficult.  21 Q. How?  22 A. Just because, again, I'm sure there are a  23 number of examples, but the easiest one is just someone  24 coming upon a voter registration card in some manner,  25 and they would have to go to the trouble of either</p>



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93 1 manufacturing or obtaining an additional document that 2 showed their identity as being the same person. So I 3 think that's just -- in that instance alone, it makes it 4 more difficult to do. 5 Q. I guess I'm not completely understanding your 6 testimony as to how that relates to noncitizen voting. 7 Could you explain? 8 A. Well, I mean that person -- the person who is 9 voting with somebody else's voter registration card may 10 or may not be a noncitizen. It could be anybody. 11 Q. Right. But my question was whether you can 12 explain how House Bill 218 would prevent noncitizens 13 from voting. 14 A. I don't think -- 15 MR. FREDERICK: Objection. Asked and 16 answered. 17 A. Yeah. I don't think any bill completely 18 precludes the possibility of voter fraud. 19 Q. And I believe you testified earlier that 20 citizenship is determined and ascertained through the 21 county election registration process when an individual 22 submits a registration application and checks a box 23 indicating citizenship and signs under penalty of 24 perjury; is that right? 25 A. Again, you know, I think the people who support	95 1 question, but -- but I think there are documents that 2 are on the list, I presume, that are available to 3 noncitizens. 4 Q. Thank you for your testimony. Are you aware in 5 2007 of any analysis or research that was conducted to 6 determine who among registered voters had these forms of 7 photo ID identified in House Bill 218? 8 A. No. 9 Q. Are you aware of any attempt or research to 10 determine whether House Bill 218 did in fact have an 11 adverse impact on minority voters? 12 A. Well, it didn't pass. 13 Q. Was there any effort to determine -- do 14 research as to whether this bill would adversely affect 15 minority voters? 16 A. Not that I'm aware of. 17 Q. Did the House pass House Bill 218 to your 18 recollection? 19 A. I believe they did. 20 Q. And what happened? Was it referred to the 21 Senate? 22 A. I believe that that -- I mean, my general 23 understanding is that prior to 2009, these bills passed 24 the House in some version and died in the Senate, and I 25 don't recall the details of how that happened.
94 1 this legislation, if I recall correctly, are somewhat 2 skeptical about the extent to which that is -- is 3 actually something that itself prohibits noncitizens 4 from voting because if you are willing to commit voter 5 fraud, then why would you be willing to fraudulently 6 check that box? 7 Q. I believe you testified earlier that if 8 assuming noncitizens manage to get onto the voter rolls 9 and they go to the polls on election day, that if they 10 present one of the forms of ID listed in House Bill 218 11 such as a driver's license, military ID, license to 12 carry concealed weapon, et cetera, that that would not 13 prevent that voter from participating in voting in the 14 election because one need not necessarily be a citizen 15 to hold and possess and obtain lawfully those documents; 16 is that correct? 17 MR. FREDERICK: Objet to the extent it 18 mischaracterizes the prior testimony, but you can 19 answer. 20 A. I -- I think I did agree that this legislation 21 didn't change the ability of someone who would vote with 22 a driver's license before from voting with a driver's 23 license after, and to the extent that they have a 24 driver's license and they are a noncitizen, then -- then 25 there's no change. I don't know if that answers your	96 1 Q. Are you aware of the photo ID bill that was 2 introduced in 2009? 3 A. Yes. 4 Q. Do you recall the bill number? 5 A. No, I don't. Again, I think I filed a shell 6 bill that really didn't have anything in it when I was 7 appointed to the elections chair and then the bill that 8 moved was -- ended up coming from the Senate. 9 Q. Can you mark this as Exhibit 29? You've been 10 handed what's been previously marked US-29. Do you 11 recognize this document? 12 A. I believe this is the Senate bill that -- or I 13 don't know if this is the version that was passed out of 14 the Senate, but I presume it is and the number refreshes 15 my memory, sounds right. 16 Q. I believe you just testified that you filed a 17 shell bill when you became committee chair for the House 18 elections committee. 19 A. Yes. 20 Q. When were you appointed chair of the House 21 elections committee? 22 A. Oh, February 2009, I believe, I guess. I'm 23 pretty sure it had to be February. It was late, I 24 remember that, because we had a new speaker. 25 Q. Was that Speaker Straus?



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<p>1 A. Yes.</p> <p>2 Q. Tell me about how it happened that you became 3 chair of the elections committee?</p> <p>4 MR. FREDERICK: Object on the basis of 5 privilege. I'll just caution you you may testify about 6 how it happened, but I would instruct you not to reveal 7 the contents of any communication with a legislator.</p> <p>8 MS. WESTFALL: Mr. Frederick, I would ask 9 what legislative act being appointing to a committee it 10 refers to? It's procedural in nature. This is not 11 protected by the privilege.</p> <p>12 MR. FREDERICK: I'm going to stand by the 13 objection, and I think he can probably -- I expect that 14 he can answer without revealing any matters I would 15 consider privileged, so --</p> <p>16 A. The speaker appointed me, I think, to answer 17 the question.</p> <p>18 Q. Why did he appoint you?</p> <p>19 A. Perhaps just another indication that he didn't 20 like me very much.</p> <p>21 Q. Did you -- What was your reaction when you were 22 appointed to the chair of the elections committee?</p> <p>23 A. It was not my choice, but I did recognize that 24 it had political significance in that particular 25 legislative session. And if we were going to get a</p>	<p>97</p> <p>1 that right?</p> <p>2 A. That was clearly the -- Yes. I spent almost 3 all of my time that session trying to pass this bill.</p> <p>4 Q. And who else of the Republican caucus of your 5 colleagues served on that committee along with you?</p> <p>6 A. Betty Brown, Dennis Bonnen, Linda Harper Brown, 7 Dwayne Bohac. I think that's -- I think I've listed off 8 all the Republicans. Did you ask me for the entire 9 committee?</p> <p>10 Q. Just the members of the Republican caucus.</p> <p>11 A. No, those were it.</p> <p>12 Q. So there was a time when you introduced shell 13 bill?</p> <p>14 A. I believe so.</p> <p>15 Q. Was it right after you had been appointed the 16 chair?</p> <p>17 A. It was soon after that, just before the 18 deadline to file House bills.</p> <p>19 Q. Do you recall the date of that filing?</p> <p>20 A. Probably early March.</p> <p>21 Q. Was there ongoing activity in the Senate with 22 regard to photo ID?</p> <p>23 A. Yes. I believe the Senate activity had already 24 begun at that point. I think they took it up very 25 early, may have already been in the process even before</p>
<p>1 voter ID bill out of the House, if that was possible, I 2 was probably a good person to try to do that under those 3 circumstances.</p> <p>4 Q. What was the political significance of chairing 5 the elections committee that year?</p> <p>6 A. Just that it was just a very visible -- I mean, 7 my God, I was, you know -- you know, just in charge of 8 public relations. It was a public relations position is 9 what it really was. It was just a lot of press, the 10 focus of the session.</p> <p>11 Q. Was it Texas press alone, national press?</p> <p>12 A. I'm sure there was some national press, but it 13 was primarily Texas press that I was dealing with.</p> <p>14 Q. Why was there so much interest from the media 15 in Texas?</p> <p>16 A. Well, I don't know, but, you know, there's a 17 lot of -- I don't know the answer to that question. It 18 was a combination of factors, but it was obviously a 19 significant political issue.</p> <p>20 Q. Was it your understanding when you were 21 appointed chair that the primary role that you were 22 going to have on the committee was to move forward a 23 photo ID law -- bill, pardon me?</p> <p>24 A. Yes.</p> <p>25 Q. That was the chief focus of the session; is</p>	<p>98</p> <p>1 I was made the chairman. I don't remember.</p> <p>2 Q. Could you mark this --</p> <p>3 A. I just remember the Senate went first.</p> <p>4 (Exhibit US-103 marked.)</p> <p>5 Q. Could you mark this as United States 103?</p> <p>6 You've been handed what's been marked US-103. Do you 7 recognize this document?</p> <p>8 A. No.</p> <p>9 Q. I will represent to you this is a legislative 10 history of Senate Bill 362 that may be able to refresh 11 your memory as to dates when things were filed and when 12 they were considered by the Senate and the House.</p> <p>13 A. M-hm.</p> <p>14 Q. So is it your testimony that as the Senate was 15 considering Senate Bill 362, you had filed a shell bill 16 as soon as you were appointed chairmanship in February 17 of '09; is that correct?</p> <p>18 A. I probably filed the shell bill in early March, 19 right before the deadline to file House bills.</p> <p>20 Q. Do you recall the number of that bill?</p> <p>21 A. No.</p> <p>22 Q. Did you work on pushing that bill through 23 legislatively or did you basically wait for the Senate?</p> <p>24 A. We waited for the Senate.</p> <p>25 Q. Did someone direct you to do that?</p>



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<p>1 MR. FREDERICK: I'm going to object on the    2 basis of privilege. I'm going to instruct you not to    3 answer that question.</p> <p>4 A. Okay.</p> <p>5 Q. Are you going to follow the advice of counsel?</p> <p>6 A. Yes.</p> <p>7 Q. Was there a time that the Senate passed 362?</p> <p>8 A. Yes.</p> <p>9 Q. That came to the House and it was referred to    10 your committee; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. Tell me what happened after that.</p> <p>13 A. Oh, we set it for a hearing right away. If I    14 recall correctly, two days of hearings, and I don't know    15 what else -- what the question is beyond that, but --</p> <p>16 Q. Did you play any role in the development of    17 Senate Bill 362 when it was introduced in the Senate?</p> <p>18 A. No.</p> <p>19 Q. You just received it in the House and took it    20 as it was; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. Is there a reason that you are aware of why    23 voter ID originated in the Senate and not the House?</p> <p>24 A. I think it was just because the Senate had    25 failed to pass it in previous legislative sessions and</p>	<p>1 362 was introduced in the Senate for the same reasons    2 that previous photo ID bills had been introduced in the    3 House?</p> <p>4 A. I presume so. The policy arguments were the    5 same.</p> <p>6 Q. Was there any new purpose that it was serving    7 in 2009?</p> <p>8 MR. FREDERICK: Object on the basis of    9 privilege, that you can answer if you can do so without    10 revealing privileged communications.</p> <p>11 A. Yeah -- No, not other than just continued    12 demand from the grassroots that this bill be passed    13 building political pressure.</p> <p>14 Q. Tell me who -- Are there particular grassroots    15 groups that you in your mind identify with this issue?</p> <p>16 A. Just, you know, I think all Republican party    17 groups, Texas Federation of Republican Women and then    18 just any other party affiliated group. The party    19 activist in general had determined that this was an    20 important issue.</p> <p>21 Q. Why was it such a priority for those groups?</p> <p>22 MR. FREDERICK: Objection. Calls for    23 speculation. You may answer.</p> <p>24 MS. WESTFALL: You may answer.</p> <p>25 A. Again, the fear that large numbers of votes</p>

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<p>1 Q. Why was it considered in that committee?  2 A. I don't know.  3 Q. Was it considered in that committee to expedite  4 its consideration by the Senate?  5 A. I don't know that that -- If you wanted to  6 expedite it, you would have to go through the committee  7 as a whole rather than substantive committee.  8 Q. Would it be easier simply to go to the  9 committee as a whole, have the whole Senate and  10 immediately have a vote by the whole Senate?  11 MR. FREDERICK: Objection. Calls for  12 speculation.  13 A. I am not an expert in Senate process, so I  14 don't really know that.</p> <p>15 Q. Are you aware of whether the lieutenant  16 governor wanted to play an increased role in  17 consideration of Senate Bill 362 and that's why the bill  18 was considered by the committee as a whole?  19 MR. FREDERICK: Objection. Vague.  20 A. I don't know. I certainly know that it was  21 important to him politically in light of the fact that  22 he had presided over prior Senates where the bill had  23 not passed to have it pass, but specifically why he  24 chose to do it as a committee as a whole or to the  25 extent to which he was even the one who made that</p>	<p>105</p> <p>1 there --  2 A. M-hm.  3 Q. -- do you see that on March 10th there was a  4 public hearing in the Senate?  5 A. M-hm. Yes.  6 Q. Does that refresh your recollection as to  7 whether you were in attendance for that portion of  8 consideration of the bill?  9 A. I just don't remember. There was obviously  10 some times when they were meeting on voter ID where I  11 was available to go and participate, and there were  12 other times where they were meeting on it and I had a  13 conflict in the House and was not able to attend or just  14 chose not to.  15 Q. Do you recall hearing that Senator Fraser at  16 that hearing was asked whether an analysis of the racial  17 analysis of voters without a driver's license had been  18 undertaken?  19 A. No, I don't recall that.  20 Q. Did you learn at any time after that hearing  21 that the elections division or another entity had  22 submitted any analysis of the racial composition of  23 voters who don't have a Texas driver's license to any  24 member of the legislature?  25 A. I don't recall ever seeing any information of</p>
<p>1 decision versus the Senate as a whole, I don't know.  2 Q. To your knowledge is the lieutenant governor  3 empowered under the Senate rules in assigning bills to  4 committees?  5 A. I don't know. I presume.  6 Q. Did you attend or listen to any of the debate  7 in the Senate for Senate Bill 362?  8 A. Yes.  9 Q. Did the committee as a whole hold a hearing on  10 Senate Bill 362?  11 A. Yes.  12 Q. Is that the hearing that you are referring to  13 that you listened to parts of?  14 A. You know, I don't really remember at what  15 points I was over there. I certainly was over there  16 when the entire Senate was meeting and discussing the  17 issue of voter ID. Whether it was during the committee  18 as a whole or whether it was when the Senate was meeting  19 or both, I don't recall.  20 Q. Looking at Exhibit US-103 on the second page --  21 A. What's that?  22 Q. The Texas Legislature Online History. Do you  23 see that?  24 A. M-hm.  25 Q. On the second page you are looking at right</p>	<p>106</p> <p>108</p> <p>1 that type the entire time I was dealing with the issue.  2 Q. While you were -- Actually, strike that.  3 So the bill was passed in the Senate. Can  4 you look -- Was it not?  5 A. Yes, it was passed in the Senate.  6 Q. And looking at US-103, can you see when it  7 passed the Senate?  8 A. It looks like to me on March the 18th.  9 Q. And then it came up to the House and in your  10 committee; is that right?  11 A. Yes.  12 Q. At that time you scheduled hearings, I believe?  13 That was your earlier testimony, I believe; is that  14 correct?  15 A. Yes.  16 Q. When were those hearings?  17 A. On opening day of the Texas Rangers baseball  18 season, whenever that was, because I couldn't go to the  19 game. I was upset about it. Early April.  20 Q. Were any changes made to Senate Bill 362 in the  21 committee?  22 A. Yes.  23 Q. What were those changes?  24 A. Whatever Linda Harper Brown and Betty Brown  25 wanted ultimately.</p>



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<p>1 Q. Which was?</p> <p>2 A. Gosh, I'm trying to remember what they finally</p> <p>3 agreed to, but we had -- There were basically six</p> <p>4 members. I had to get five votes from six members.</p> <p>5 Republicans and Heflin were the only ones who were even</p> <p>6 in play, and so any two of them could cooperate and</p> <p>7 control the language in the bill, and they did. And so,</p> <p>8 you know, I don't remember, but it was a -- basically a</p> <p>9 very strict photo ID requirement, if I recall correctly.</p> <p>10 Not what I had proposed, but was actually voted out of</p> <p>11 the committee, and then I filed my bill as an amendment</p> <p>12 should it have gotten to the floor.</p> <p>13 It was my intent to get the members of the</p> <p>14 legislature to vote on both versions, and my expectation</p> <p>15 is, if we had gotten there, that the strict version</p> <p>16 would have been defeated and then mine would have been</p> <p>17 offered as an alternative and would have passed if the</p> <p>18 base of the party had been willing to support it, and</p> <p>19 they would not have, I don't think.</p> <p>20 Q. So the stricter version that you are referring</p> <p>21 to was that strictly photo ID without the two non-photo</p> <p>22 IDs alternatives to the best of your recollection?</p> <p>23 A. In general, yes, that's the best of my</p> <p>24 recollection.</p> <p>25 Q. And your amendment --</p>	<p>111</p> <p>1 Q. We'll talk about that in a moment. In the</p> <p>2 interim, you've been handed what's been marked as United</p> <p>3 States 104.</p> <p>4 A. M-hm.</p> <p>5 Q. Do you recognize this document?</p> <p>6 A. No -- Oh, yes. I recognize not this document,</p> <p>7 but I recognize what the document is referring to.</p> <p>8 Q. What is it?</p> <p>9 A. Basically a document that was signed by 71, I</p> <p>10 believe. Does it say 71? Ultimately a document like</p> <p>11 this was signed by 71 members, I believe.</p> <p>12 Q. Could you describe the document?</p> <p>13 A. This was just a -- Let me read this one real</p> <p>14 quick.</p> <p>15 Q. Take your time.</p> <p>16 A. Yeah. I was -- This was something that I</p> <p>17 actually participated in drafting the language that was</p> <p>18 ultimately signed by 71 of the Republican members of the</p> <p>19 House. It was brought to me before it was published,</p> <p>20 and I was given the opportunity to actually amend it and</p> <p>21 change some of the language in this document. For</p> <p>22 example, I believe I was personally responsible for</p> <p>23 putting in there the next possible uniform election date</p> <p>24 rather than the next election date. There were some</p> <p>25 changes that I made of that type and, you know, I</p>
<p>110</p> <p>1 A. Actually, I think I may be wrong about that</p> <p>2 because I think that the Senate -- because they had</p> <p>3 voted for two non-photos, that -- that -- I think -- I</p> <p>4 don't remember. I just don't remember what they</p> <p>5 required. I shouldn't speculate. I don't remember.</p> <p>6 But it -- it clearly did not include some of the things</p> <p>7 that I had proposed for purposes of obtaining the</p> <p>8 marginal votes like delaying implementation beyond the</p> <p>9 redistricting year, money for a voter registration</p> <p>10 drive. I remember all the -- there's, I think, three</p> <p>11 different sweeteners that we put in there to try to get</p> <p>12 the marginal votes.</p> <p>13 (Exhibit US-104 marked.)</p> <p>14 Q. Could you mark this US-104?</p> <p>15 A. Actually, I remember now. At the end of the</p> <p>16 day, their position was we will vote for the precise</p> <p>17 Senate bill period. If I recall correctly, I think what</p> <p>18 we voted on committee was precisely the Senate bill.</p> <p>19 Q. And you were endeavoring a committee to widen</p> <p>20 the appeal of the bill --</p> <p>21 A. Yes.</p> <p>22 Q. -- by adding, as you said, some sweeteners to</p> <p>23 the bill?</p> <p>24 A. Yes.</p> <p>25 (Exhibit US-104 marked.)</p>	<p>112</p> <p>1 thought it was a good because if we were going to pass</p> <p>2 the bill, it would -- it would require -- this would</p> <p>3 allow the 71 members who were willing to support a hard</p> <p>4 photo ID bill to go on record as that being their</p> <p>5 preference, which I thought would then free them up to</p> <p>6 support my version, which is the one that actually got a</p> <p>7 chance to pass. Does that make sense?</p> <p>8 Q. Actually, it doesn't make sense.</p> <p>9 A. They needed to be clear to the extent that the</p> <p>10 party preferred a strict version, if that's what we're</p> <p>11 going to call it, and we ultimately passed something</p> <p>12 that was less strict. This would allow these members to</p> <p>13 go on record again as expressing their preference for</p> <p>14 the version that was preferred by the party, which I</p> <p>15 hoped would then free them up to then support the</p> <p>16 version that actually had a chance to pass.</p> <p>17 Q. Do you see that this document appears to be</p> <p>18 dated April 28, 2009 on the upper right?</p> <p>19 A. I didn't see that.</p> <p>20 Q. On the upper right of the first page. It could</p> <p>21 be dated at the bottom of the letter as well, but --</p> <p>22 A. Yeah. I don't think -- There is clearly not 71</p> <p>23 people that are listed here, and so I don't really know</p> <p>24 what -- you know, what -- ultimately, there were 71</p> <p>25 people. I'm almost sure of that. I don't recall the</p>



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<p>1 number because it really kind of made my point, which is  2 that it takes 76 votes to pass a bill and 71 is not  3 enough.</p> <p>4 Q. At what stage in the legislative process was  5 this pledge published to the best of your recollection?</p> <p>6 A. Well, it looks like to me it was published on  7 or before April 28, but I don't recall that. I don't  8 recall specifically. It was late in the session. I  9 remember that.</p> <p>10 Q. How long was Senate Bill 362 in the House  11 committee?</p> <p>12 A. Got there in late March, committee hearing in  13 early April and voted out, if I recall, something --  14 well, it may be on this sheet -- May the 10th or  15 something like that in that range is when I think the  16 bill was voted out of the committee. It doesn't --  17 Yeah, what does it say? May 11th.</p> <p>18 Q. Thank you.</p> <p>19 A. M-hm.</p> <p>20 Q. So to reiterate what you told us about the  21 procedural history, the bill came to the elections  22 committee and the bill as it was filed in the Senate  23 essentially, SB362, was advanced by some members of the  24 committee. You wanted a substitute that had some other  25 provisions in it that would make it more powerful to</p>	113	<p>1 guess we even had a couple of Republicans who had  2 previously voted against it.</p> <p>3 Q. What was the basis of the opposition to Senate  4 Bill 362?</p> <p>5 A. Well, I think the basis for the Republicans  6 might be different than the basis from the Democrats.</p> <p>7 Q. So why don't we start with the Democrats first.  8 What was the basis of their opposition?</p> <p>9 A. Okay. Because my -- I think I've already  10 described it. Would just be concern that the additional  11 requirements to vote would somehow disproportionately  12 prevent Democrats from voting rather than Republicans.  13 Again, in this version, which was not a strict photo ID  14 requirement, I really don't understand why that would be  15 the case because the document's already in their  16 possession, but they obviously felt like that there was  17 some reason to oppose it.</p> <p>18 Q. And --</p> <p>19 A. In my opinion it was just foolish politically.  20 In that bill, I think they were foolish politically.</p> <p>21 Q. You think the basis was --</p> <p>22 A. The Democrats were foolish politically in the  23 way they handled it that session. If I put on my  24 Democratic party hat and was an advocate for their  25 interests, I think their interest would have been far</p>	115
<p>1 other members of the House --</p> <p>2 A. Yes.</p> <p>3 Q. -- and then, ultimately, it stayed in your  4 committee until May 11th.</p> <p>5 A. Yes.</p> <p>6 Q. And what version came out of the committee?</p> <p>7 A. The Senate bill.</p> <p>8 Q. And then it went to the House, and what  9 happened after that?</p> <p>10 A. It never made it to the House floor. That was  11 the infamous --</p> <p>12 MS. PERALES: Chub.</p> <p>13 A. Yeah. Where the -- the opponents of the bill  14 basically talked the session -- talked the remainder of  15 the session so that bill and every bill after it on the  16 calendar died.</p> <p>17 Q. So there was, I take it, opposition to Senate  18 Bill 362 in the House?</p> <p>19 A. Some, yes.</p> <p>20 Q. And can you describe all the quarters of  21 opposition to Senate Bill 362?</p> <p>22 A. All the what?</p> <p>23 Q. All the different factions or categories of  24 legislators who disliked the bill?</p> <p>25 A. I think it was basically every Democrat, and I</p>	114	<p>1 better served by passing the kind of bill that would  2 have passed that session than by being tarred and  3 feathered for killing an entire calendar of bills in  4 order to prevent a very popular piece of legislation  5 from passing. I do not understand how that could have  6 been in the best interests of the Democratic party's  7 political prospects.</p> <p>8 Q. And you are suggesting that opposition from the  9 Democrats was because of self-interest in terms of  10 Democratic voters being depressed by this bill. Is that  11 your testimony?</p> <p>12 A. Again, you know, they obviously believed that.  13 I don't understand why they believed that.</p> <p>14 Q. Did they have other concerns?</p> <p>15 A. You know, I think they were being pressured.  16 Just like Republicans were being pressured by their  17 grassroots, Democrats were being pressured by some of  18 their activist organizations that are -- you know,  19 probably have different views than some of the rank and  20 file members that were Democrats on the floor.</p> <p>21 Q. Was there any concern about disproportionate  22 impact of Senate Bill 362 on minority voters?</p> <p>23 A. I think, yeah, the -- the advocacy groups,  24 MALDEF and NAACP, certainly expressed those concerns.</p> <p>25 Q. Were there any legislators who expressed those</p>	116



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1     concerns? 2     A. Yes. 3     Q. Who were they? 4     A. Rafael and Mark Veasey and a number of others. 5     Q. Anybody else you can name sitting here today? 6     A. I think Mark and Rafael were the leading two 7     opponents, kind of representative of the two largest 8     minority groups. 9         (Exhibit US-105 marked.) 10    Q. So I believe you testified -- Actually, strike 11    that. 12    Could you mark this US-105? You've been 13    handed what's been marked US-105. Do you recognize this 14    document? I'll give you a chance to take a look. 15    A. It's apparently one of many, many news stories 16    in that legislative session about this issue. Do you 17    want me to read it? 18    Q. If you could just take a quick glance, 19    particularly, where it talks in the middle of the page 20    about changes that you were proposing to make to 21    accomplish passage in the House of photo ID. 22    A. It looks like it's talking here primarily about 23    the delay in implementation. 24    Q. Could you explain that provision of your 25    alternative?	117 1     any 76 people would ever agree to. 2     Q. So you mentioned I think sweeteners, and would 3     you describe that this delay in implementation was one 4     of those provisions? 5     A. Yes. 6     Q. Were there other provisions? 7     A. There were other provisions, yes, and I want to 8     think there were three, and I'm having trouble 9     remembering the third one, but one of them was to spend 10    several million dollars on a major statewide voter 11    registration drive to increase the number of legal 12    registered voters. 13    Q. Who was going to conduct that drive? 14    A. I think it was just -- we were just going to -- 15    You know, the plan was to flow money for those drives 16    through the voter registrar's office of the counties 17    throughout the state. 18    Q. Were the county officials going to be doing 19    those drives? 20    A. Yes. 21    Q. And were they going to be targeted in areas 22    that were underserved or lower registration levels? 23    A. I think the intent was to have the county 24    officials in each county to do a county-wide voter 25    registration drive, and, you know, there may have been
131   A. There was concern -- The allegation from the 132    opposition was that we were trying to somehow adversely 133    affect the redistricting year elections, and my proposal 134    was to prove that that was not the case by simply 135    ensuring that the implementation and legislation would 136    not occur until after that election had occurred, and 137    there was some question about whether or not you could 138    even successfully go through all the legal hurdles in 139    time for this legislation to be implemented by the next 140    election cycle anyway. So that was what I referred to 141    as a quasi-concession because I wasn't even entirely 142    sure that it was a concession, but, believe me, I -- you 143    know, I was ripped to shreds by the -- some of the 144    Republican activists for having the audacity to suggest 145    such a thing, but it was, you know, one of several 146    things that resulted from my conversations with the 147    people whose votes we needed to pass the bill to try to 148    find ways that we could obtain their votes, and, 149    obviously, I realized I had to do it in a way that would 150    not offend the base, and so I was trying to find things 151    that would get the marginal votes on board, but that 152    would not cause me to lose the base, and I don't know 153    that in that legislative session it was possible to find 154    any language that 76 people would agree to. In fact, I 155    strongly believe that it was not. There was no language	118 131   some language in some of the versions in my bill that 132    specified that it had to -- the drive had to be 133    county-wide and had to be an effort to register voters 134    in all parties of the county. 135    Q. So it was not targeted necessarily to 136    communities where there was historic low levels of 137    registration or where there had been historic levels of 138    disenfranchisement in Texas? 139    A. I think the intent was to require that the 140    registration drive be implemented everywhere to try to 141    increase the number of registered voters everywhere. 142    Q. How much monies had you appropriated in the 143    bill or authorized for appropriation? 144    A. I don't remember, but several million. It was 145    five or \$10,000,000, 4 million. I don't remember 146    precisely the number. It was subject to negotiation to 147    the extent that we got there, but I do think there was 148    some money set aside in the appropriations bill for that 149    purpose. 150    Q. What was the third provision if you can 151    remember it sitting here today? And if not, I won't 152    press you. 153    A. Gosh, what was it? Money to register voters, 154    delay in implementation. 155    Q. Sir, was it a --



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1 A. I can't remember. 2 Q. -- list of sort of a way -- of bright-line rule 3 for determining whether someone had proven their 4 identification at the polls? Was that it? 5 A. Was what now? 6 Q. Like list your hair color, list your eye color? 7 Was it something very specific about ID at the polls or 8 does that not ring a bell? 9 A. No. 10 Q. Okay. 11 A. It was something -- I just remember -- I 12 remember there was -- that I had assurances of certain 13 marginal votes that if we added three things to the 14 Senate bill, that they would vote for the bill. 15 Q. Where did you get this language or ideas for 16 sweeteners? 17 A. Just from conversations with those people who I 18 knew were the handful of people who had previously voted 19 against it that might be persuaded to vote for it with 20 some changes. 21 Q. Were those legislators -- were any of them 22 racial minorities? 23 A. No. 24 Q. And were attempts to generate a compromise in 25 committee, did they eventually break down?	121 1 A. Well, I don't know about 2010. I don't 2 remember when we had them -- when we had the interim 3 committee, but I imagine that's when it was. 4 Q. Was it in June of 2010 -- 5 A. Probably just had one hearing on it. 6 Q. Did you convene the meeting as the chair? 7 A. I believe so. 8 Q. What was the focus of the hearing? 9 A. Just, I think, to hear invited testimony about 10 any additional information that had developed since the 11 last legislative session in terms of other states' 12 involvement with this type of legislation. 13 Q. Do you recall that Ann McGeehan testified in 14 that hearing? 15 A. I presume she did. She's testified in front of 16 the hearing committee so many times, I don't really 17 recall that specific one, but I'm sure she did. 18 Q. Do you recall that at the hearing she had 19 testified that she was aware at that time of 24 election 20 fraud cases for possible prosecution of election fraud 21 in the past two years and that two of those involved 22 in-person voter impersonation? 23 A. Sounds right. 24 Q. Did you have any reaction to Ms. McGeehan's 25 testimony?
122 1 A. Yeah. Most of my efforts during the session 2 were focused on what -- what I would have to do to get a 3 bill off the floor. It became quite apparent once it 4 was time to get the bill out of the committee that I 5 wasn't in control of the language of what was coming out 6 of the committee. 7 Q. Did you vote for the bill in committee? 8 A. Yes. 9 Q. And that was essentially 362 that came out of 10 the committee? 11 A. I believe it was exactly 362. 12 Q. Was it a straight party line vote? 13 A. No. Heflin voted for it. 14 Q. So I believe you testified that Senate Bill 362 15 was -- didn't reach the House floor because it was 16 chubbed; is that correct? 17 A. Yes. 18 Q. Did you remain chair of the committee on 19 elections for the interim session -- 20 A. Yes. 21 Q. -- in 2010? 22 A. Yes. 23 Q. Did you hold hearings on voter ID in 2010? 24 A. I believe we did. 25 Q. Did you hold more than one?	124 1 A. No. I think, you know, by that time I was sort 2 of -- I was pretty aware of that sort of statistic. 3 Q. Was it your intent at that time to move forward 4 in the next session with a photo ID law? 5 A. I think that would just entirely depend upon 6 what would happen in the elections following the 7 hearing, but -- and, clearly, once those elections 8 occurred, there was no question that it was going to 9 happen and happen quickly. 10 Q. So what happened after the 2010 election that 11 caused you to think that? 12 A. Republicans got 101 votes in the House and 13 maintained their majority in the Senate. 14 Q. When did you first become aware of the fact 15 that the Texas legislator was going to move forward 16 rapidly on photo ID in 2011? 17 A. Well, I think just as a -- presumptively, I 18 think I became aware of it when the election results 19 came in. I would have known that would have followed. 20 In terms of formerly being notified of that, I think it 21 probably wouldn't have happened until the committee 22 assignments were made, and there was a select committee 23 on voter ID. 24 Q. When did you learn -- So you were no longer on 25 the House election committee in 2011?



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<p>1 A. Right.</p> <p>2 Q. When did you learn that?</p> <p>3 A. Oh, I, you know, did not want to chair the</p> <p>4 elections committee again, and so, you know, without</p> <p>5 revealing conversations, my understanding was -- my</p> <p>6 belief was that I would be given a different</p> <p>7 chairmanship, and, you know, that makes a lot of sense</p> <p>8 because, again, the version that I was touting was the</p> <p>9 version -- the only version that had a chance to pass,</p> <p>10 if any did, and I think it turns out none did, but if</p> <p>11 any did in 2009, and, clearly, the version that had a</p> <p>12 chance to pass in 2011 was going to be dramatically</p> <p>13 different, and so it would have been awkward for me to</p> <p>14 be pushing dramatically different legislation when I was</p> <p>15 very public in defending the version that had a chance</p> <p>16 to pass in the prior legislative session.</p> <p>17 So I think it made perfect sense to have</p> <p>18 someone else do that, and I just, you know -- you know,</p> <p>19 would rather -- you know, I never had asked for an</p> <p>20 assignment that required me to spend all of my time as</p> <p>21 party chairman. Not my favorite assignment.</p> <p>22 Q. So when are committee assignments -- when were</p> <p>23 committee assignments determined in 2010 for the 2011</p> <p>24 session?</p> <p>25 A. I don't know when they were determined. They</p>	125	<p>1 A. I think in general they were -- as we've</p> <p>2 already discussed were concerned that illegal voters</p> <p>3 were voting in large numbers and potentially changing</p> <p>4 the results of elections.</p> <p>5 Q. Do you have any understanding of why your</p> <p>6 constituents believed this or the basis for their</p> <p>7 belief?</p> <p>8 MR. FREDERICK: Objection. Calls for</p> <p>9 speculation. You may answer.</p> <p>10 A. Just because it was the number one priority of</p> <p>11 various different party organizations and was discussed</p> <p>12 at length at almost every meeting. It had just become a</p> <p>13 priority of the party.</p> <p>14 Q. I guess in terms of -- I'm going to re-ask my</p> <p>15 question a different way. Your constituents had -- I</p> <p>16 believe you testified your constituents had a view that</p> <p>17 there was a lot of illegal noncitizen voting occurring</p> <p>18 and that's why strict photo ID was required, and this</p> <p>19 was in 2010; is that correct?</p> <p>20 MR. FREDERICK: Object. Mischaracterizes</p> <p>21 prior testimony. You may answer.</p> <p>22 A. Yeah, again, illegal voting, not necessarily</p> <p>23 limited to noncitizens, but certainly one of their --</p> <p>24 you know, yes. I mean, there was, you know, certainly a</p> <p>25 major concern that some of the fraudulent voting that</p>	127
<p>1 were announced in February, I imagine, of 2011. Could</p> <p>2 have been January, but it probably was February.</p> <p>3 Q. Did you introduce any election related</p> <p>4 legislation at the end of 2010 to be filed in 2011?</p> <p>5 A. Yes. I filed -- After having been accused in</p> <p>6 my election of what I was accused of, I did file a</p> <p>7 strict photo ID bill at the beginning of the legislative</p> <p>8 session, but I didn't expect that that would be the</p> <p>9 vehicle. It was just something I chose personally to</p> <p>10 file.</p> <p>11 Q. What made you do that having taken the stance</p> <p>12 you previously had six months earlier?</p> <p>13 A. Just because to make it clear, as I had</p> <p>14 explained to my constituents, that the version I was</p> <p>15 supporting in 2009 was the most strictest version that</p> <p>16 had a chance to pass and with 101 Republicans, it was a</p> <p>17 very different scenario, and, clearly, you know, what my</p> <p>18 constituents wanted was to make people show a photo ID</p> <p>19 in order to vote, period.</p> <p>20 Q. Was that your motivation?</p> <p>21 A. To represent my constituents, yes.</p> <p>22 Q. And why were they motivated to tell you we must</p> <p>23 have this strict photo ID bill?</p> <p>24 MR. FREDERICK: Objection. Calls for</p> <p>25 speculation.</p>	126	<p>1 was occurring could be by people who were not even</p> <p>2 citizens of the United States.</p> <p>3 Q. And are you aware of any facts or information</p> <p>4 that any of your constituents had about that phenomenon</p> <p>5 you just described?</p> <p>6 A. No.</p> <p>7 (Exhibit US-106 marked.)</p> <p>8 Q. You've been handed what's been marked US-106.</p> <p>9 Do you recognize this document?</p> <p>10 A. I'm sorry. I'm still looking at this newspaper</p> <p>11 article. 106?</p> <p>12 Q. Yes.</p> <p>13 A. Is this the one I filed in 2011? Yeah, it</p> <p>14 looks like it.</p> <p>15 Q. And was this the bill that you were just</p> <p>16 referring to in terms of --</p> <p>17 A. Yes. And basically what this is is it's</p> <p>18 patterned after one of the other states. I don't</p> <p>19 remember which state. I asked ledge counsel to draft a</p> <p>20 bill that was patterned after -- it could have been</p> <p>21 Georgia. I don't remember any state, but I think my</p> <p>22 decision was to have them draft a bill from a state that</p> <p>23 was a Section 5 state where it had been implemented, and</p> <p>24 I don't -- it could have been Georgia. I just don't</p> <p>25 recall as I sit here today if that's for sure the case,</p>	128



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<p>1 but a southern state that had successfully implemented a    2 photo ID requirement.    3 Q. Thank you.    4 A. M-hm.    5 Q. Are you familiar with ways in which this bill,    6 House Bill 401, differs from Senate Bill 14 that was    7 filed by Senator Fraser?    8 A. In general, it simply does not allow you to    9 vote with two non-photo IDs. Big difference.    10 Q. And do you see at the first page on Section    11 12 -- well, Section 1 of the bill, the section regarding    12 voter ID cards?    13 A. M-hm.    14 Q. Do you know why you included this provision?    15 A. Probably because whatever state I asked that    16 this legislation being patterned after had some similar    17 provision, but --    18 Q. And do you see that this requires that the    19 "registrar provide at least one place in the county to    20 accept applications for and issue Texas voter    21 identification cards"? And do you see that? Yes?    22 A. I'm not seeing where exactly it says that.    23 Q. On Page 1 --    24 A. Page 1.    25 Q. -- under Section 12.007.</p>	<p>1 included that provision?    2 A. You know, yes. I mean, I think the presumption    3 was that by requiring some such availability by county    4 that the maximum distance that anyone would have to    5 travel to get one could only be so much.    6 Q. Do you see also that this same paragraph    7 requires a voter registrar can't charge an application    8 fee for the issuance of a Texas voter ID card?    9 A. Right.    10 Q. Why did you include that provision in the bill?    11 A. I think all versions of the bill previously    12 considered had provided this identification card    13 available at no charge, and, you know, because we don't    14 make people pay to vote.    15 Q. I direct your attention to the forms of voter    16 ID on Page 5 of this document, starts on Page 5 --    17 actually, starts on Page 6. Pardon me. Do you see that    18 where it lists forms of ID?    19 A. M-hm.    20 Q. How did you create this list of allowable forms    21 of ID?    22 A. I don't remember. It was probably something    23 that was just pulled from prior versions of the    24 legislation.    25 Q. Do you see that it includes student IDs?</p>
130	132
	<p>1 A. M-hm. Each voter registrar shall issue -- "The    2 voter registrar must provide one place in the county to    3 accept applications for and issue Texas voter    4 identification cards." Yeah.    5 Q. Do you remember that provision?    6 A. I didn't remember it until you pointed it out    7 to me. You know, I think that's just about ensuring    8 that there is access -- reasonably easy access to these    9 cards.    10 Q. Do you believe that's important to include in    11 any photo ID bill?    12 MR. FREDERICK: Objection. Relevance.    13 A. I do, yes, believe that it is important that    14 legal voters have access to the polls.    15 Q. Did you believe that it was an important    16 attempt to try to minimize the burden on voters who    17 didn't possess one of the forms of photo ID?    18 MR. FREDERICK: Objection. Relevance.    19 You may answer.    20 A. I think it is important to take all reasonable    21 efforts to ensure that legal voters have a reasonable --    22 reasonable burden in casting a legal vote.    23 Q. And do you think it's important in that regard    24 to ensure that voters don't need to travel a significant    25 distance to obtain one of these cards? Is that why you</p>



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June 1, 2012

<p>1 to do?</p> <p>2 A. Require that a voter provide proof of</p> <p>3 citizenship when registering to vote rather than simply</p> <p>4 relying on their honesty in checking the box.</p> <p>5 Q. Which of your constituents were --</p> <p>6 A. Which of my constituents were what?</p> <p>7 Q. I'm sorry. I'm gathering may thoughts. Which</p> <p>8 of your constituents urged you to file this type of</p> <p>9 legislation?</p> <p>10 A. I don't -- I don't know that I can cite</p> <p>11 specific constituents that urged me to do it. I think</p> <p>12 in some of the political literature that we had sent out</p> <p>13 responding to the attacks that I killed voter ID, we had</p> <p>14 decided to say we would file certain legislation like</p> <p>15 this. So it was a -- you know, just keeping a campaign</p> <p>16 pledge.</p> <p>17 Q. Why do you think this bill was necessary?</p> <p>18 A. I don't know that it is necessary. I think</p> <p>19 that it's just another way that you can ensure that</p> <p>20 every legal voter is a citizen.</p> <p>21 Q. This was designed to require documentary proof</p> <p>22 of citizenship when registering to vote; is that right?</p> <p>23 A. Right. I think Arizona did it, if I recall</p> <p>24 correctly; is that right?</p> <p>25 Q. As you sit here today, can you think of any</p>	133	<p>1 A. Yes.</p> <p>2 Q. Were hearings held on this bill?</p> <p>3 A. I don't think so. I don't know. I don't</p> <p>4 remember. I can't be sure.</p> <p>5 Q. When did you file this bill?</p> <p>6 A. Must not have been right at the very beginning</p> <p>7 of the session because of the number, but it must have</p> <p>8 been sometime in January, I would imagine, of 2011.</p> <p>9 Q. Are you aware of whether Senator Fraser filed a</p> <p>10 similar bill in the Senate?</p> <p>11 A. No.</p> <p>12 Q. Did you talk to Senator Fraser about filing</p> <p>13 this bill?</p> <p>14 A. No.</p> <p>15 Q. Did you give anyone advance notice about filing</p> <p>16 this bill?</p> <p>17 A. Not other than my constituents in the campaign.</p> <p>18 Q. Did this bill pass the House?</p> <p>19 A. No.</p> <p>20 Q. Why was there not more support for this bill?</p> <p>21 MR. FREDERICK: Objection. Calls for</p> <p>22 speculation.</p> <p>23 A. I don't know. I don't know. You know, I think</p> <p>24 there was support for the bill. For whatever reason,</p> <p>25 the chairman of the committee chose not to pass it out</p>	135
<p>1 facts or information that would support the need for</p> <p>2 requiring documentary proof of citizenship when</p> <p>3 registering to vote?</p> <p>4 A. Just because there is concern among the people</p> <p>5 I represent that it's too easy to lie and thereby vote</p> <p>6 and that, therefore, they presume it's probably</p> <p>7 happening.</p> <p>8 Q. Do you have any evidence or facts or</p> <p>9 information about noncitizens who had done just that and</p> <p>10 were on the voter rolls?</p> <p>11 A. No.</p> <p>12 Q. Did your constituents present you with any such</p> <p>13 facts or analysis?</p> <p>14 A. No.</p> <p>15 Q. Do you have any data from the elections</p> <p>16 division on that point?</p> <p>17 A. No.</p> <p>18 Q. Were you at all concerned that this legislation</p> <p>19 would be burdensome to voters if enacted?</p> <p>20 MR. FREDERICK: I think I need to object</p> <p>21 here on privilege. This has now gotten into your</p> <p>22 specific mental impressions about this legislation as</p> <p>23 opposed to its purpose, so I'll instruct you not to</p> <p>24 answer on the basis of privilege.</p> <p>25 Q. Are you following your counsel's advice?</p>	134	<p>1 of committee, if I recall correctly.</p> <p>2 Q. Did you have any concerns that this bill would</p> <p>3 disproportionately fall on Hispanic voters?</p> <p>4 MR. FREDERICK: Objection. Privilege.</p> <p>5 Instruct you not to answer.</p> <p>6 Q. Are you following the advice of counsel?</p> <p>7 A. Yes.</p> <p>8 Q. Are you aware of any conversations with any</p> <p>9 legislator or constituent about concerns of this bill</p> <p>10 falling more heavily on Hispanic eligible voters?</p> <p>11 A. Say that one more time.</p> <p>12 Q. That was a long question. Let me try again.</p> <p>13 Are you aware of any communications about concerns that</p> <p>14 this bill would fall more heavily on eligible Hispanic</p> <p>15 voters?</p> <p>16 MR. FREDERICK: Objection to the extent</p> <p>17 that this would call for communications from other</p> <p>18 legislators or legislative staff and instruct you not to</p> <p>19 answer on the basis of privilege. Otherwise, you may</p> <p>20 answer, if you can.</p> <p>21 A. Let me just say I don't believe there were any</p> <p>22 discussions of any significance, and, you know, to some</p> <p>23 extent in answering the prior questions, it's not going</p> <p>24 to create -- in other words, this is not -- I don't</p> <p>25 think likely to pass, and so bills that do not pass,</p>	136



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<p>1 cannot create burdens.</p> <p>2 Q. Did it not generate a lot of attention?</p> <p>3 A. No. N-hn.</p> <p>4 Q. Did you receive they criticism from any quarter</p> <p>5 after you filed this bill?</p> <p>6 A. I don't recall that ever happening, no.</p> <p>7 Q. Were there a number --</p> <p>8 A. This is the kind of bill where your presumption</p> <p>9 is that it's not going to pass unless the leadership of</p> <p>10 the state wants it to pass, and there's no indication on</p> <p>11 my part that that was the case, and, therefore, my</p> <p>12 presumption I was keeping a political pledge and filing</p> <p>13 a bill that was not likely to go anywhere.</p> <p>14 Q. So, in other words, this was a symbolic</p> <p>15 legislation?</p> <p>16 A. It was. You know, again, I filed it and if the</p> <p>17 powers that be wanted to move it, it could have moved,</p> <p>18 but --</p> <p>19 Q. Did you --</p> <p>20 A. -- I had no indication that that was going to</p> <p>21 happen.</p> <p>22 Q. Did you nevertheless have concerns that some of</p> <p>23 your Hispanic constituents might be concerned about this</p> <p>24 bill?</p> <p>25 A. No, nobody ever expressed that to me.</p>	137	<p>1 use in conjunction with one another, you had to provide</p> <p>2 one of the much smaller number of photo IDs and you</p> <p>3 could not vote without a photo ID, except I think in the</p> <p>4 final version there were some exceptions.</p> <p>5 Q. And this bill was filed in the Senate, correct?</p> <p>6 A. Yes.</p> <p>7 Q. This bill was filed by Senator Fraser; is that</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know who decided to include these</p> <p>11 particular forms of ID in Senate Bill 14?</p> <p>12 A. No.</p> <p>13 Q. Were you at all involved in that decision?</p> <p>14 A. No.</p> <p>15 Q. Do you know why it was so restrictive in the</p> <p>16 bill as filed?</p> <p>17 A. No.</p> <p>18 Q. Do you know why there were only four forms of</p> <p>19 photo ID?</p> <p>20 A. No.</p> <p>21 Q. And do you know why any one of these was</p> <p>22 included in the bill?</p> <p>23 MR. FREDERICK: Objection.</p> <p>24 A. No.</p> <p>25 Q. Do you recall when Senate Bill 362 allowed for</p>	139
<p>1 Q. I'm going to hand you what's been previously</p> <p>2 marked as US-81. Do you recognize this document?</p> <p>3 A. I presume this is the bill that we passed this</p> <p>4 prior session on voter ID.</p> <p>5 Q. And I will represent to you, I'm sure your</p> <p>6 counsel won't disagree, this is the version that was</p> <p>7 filed in the Senate. This was not the engrossed</p> <p>8 version.</p> <p>9 A. Okay.</p> <p>10 Q. Are you familiar with the forms of photo ID</p> <p>11 allowable under Senate Bill 14?</p> <p>12 A. I don't recall off the top of my head, no.</p> <p>13 Q. Turning your attention to Page 8 of this</p> <p>14 document, Section 12, could you take a quick look at the</p> <p>15 forms of ID allowable listed on Page 8?</p> <p>16 A. Okay.</p> <p>17 Q. Do you see that it only allows for a relatively</p> <p>18 limited number of IDs; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. Does this represent a significant departure</p> <p>21 from Senate Bill 362 in terms of forms of allowable ID?</p> <p>22 A. Yes.</p> <p>23 Q. Could you describe those differences?</p> <p>24 A. Instead of having a long list of photo IDs</p> <p>25 and/or to a long list of non-photo IDs that you could</p>	138	<p>1 expired IDs in any cases?</p> <p>2 A. No, I don't remember.</p> <p>3 Q. And if you don't remember, you can refer back</p> <p>4 to Bill 362 if you want to look at the list of IDs</p> <p>5 because I want to ask you some questions to compare.</p> <p>6 A. You want me to look at the photo IDs or the</p> <p>7 non-photo?</p> <p>8 Q. The photo. For example, turning your attention</p> <p>9 to the driver's license --</p> <p>10 A. M-hm.</p> <p>11 Q. -- if you see under Senate Bill 14 as filed --</p> <p>12 A. Yes.</p> <p>13 Q. -- it could not be expired and under Senate</p> <p>14 Bill 362 it could have been expired within two years of</p> <p>15 presenting that form of ID; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know why Senate Bill 14 limited the</p> <p>18 ability to present expired ID that had been in place in</p> <p>19 362?</p> <p>20 A. No.</p> <p>21 Q. Is there any difference in terms of proving</p> <p>22 your identity when you go to the polls and using a form</p> <p>23 of ID that was expired within two years and one that is</p> <p>24 current in your view?</p> <p>25 A. Not that I can think of.</p>	140



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June 1, 2012

141	<p>1 Q. Do you know why non-photo ID was eliminated as 2 an acceptable form of ID in Senate Bill 14? 3 A. Just a concern that, again, just like a voter 4 registration card, someone can have one of those 5 documents in their possession and represent that they 6 are somebody they are not and that wouldn't be readily 7 apparent at the polls. 8 Q. But it was an acceptable form of ID that the 9 Senate had just passed in 2009, correct? 10 A. Yes. 11 Q. And in the form of Senate Bill 362, right, that 12 provision was included. 13 A. Yes. 14 Q. And the Senate supported it; is that right? 15 A. Yes. 16 Q. So why the complete change in approach in 2011? 17 MR. FREDERICK: Objection. Asked and 18 answered. 19 A. I think it was just because in each instance 20 the legislature was trying to pass the strictest photo 21 ID bill it could under the political make-up of the 22 body. 23 Q. Who would know why non-photo ID was taken out 24 of Senate Bill 14? 25 A. I think everybody understands why non-photo ID</p>	143
142	<p>1 was taken out of Senate Bill 362 because it was just a 2 demand by our constituents that we require a photo ID in 3 order for people to vote, and they were very cynical 4 about the notion of allowing non-photo IDs, and you 5 were -- like I said, my opponent used that against me in 6 the most recent election politically, without mentioning 7 that he too had voted for that same version of the bill. 8 So this notion of letting people vote with their library 9 card feeds the perception that you are in favor of 10 liberal laws allowing people to vote even under 11 circumstances where they were not legally entitled to. 12 Q. Do you know whether there was one person or a 13 group of people who decided that Senate Bill 14 would 14 not include non-photo ID? 15 A. Like I said, I think every Republican member of 16 the legislature would have been lynched if the bill had 17 not passed. That was a fairly strict photo ID bill 18 given the political make-up of the body in 2011. 19 Q. Do you have a feeling of who was driving Senate 20 Bill 14 in the Senate? 21 MR. FREDERICK: Objection. Relevance. 22 Objection. Asked and answered. 23 A. I think it was being driven by -- you know, you 24 could argue that the grassroots themselves were being, 25 you know, incited by outsiders, but however that</p>	144



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1     Q. Did you speak to Julie Rathgeber at all in his 2 office? 3     A. Not that I recall. 4     Q. Or Mr. Brunson? 5     A. Not that I recall. 6     Q. Did you speak with any of those individuals 7 after Senate Bill 362 did not pass in the House? 8     A. I don't remember. May have, may not have. If 9 so -- If so, it might have been in passing sometime 10 during the interim. 11    Q. During your attention back to Senate Bill 14, 12 do you see it refers to US military identification 13 cards? 14    A. Yes. 15    Q. And do you know what type of documents are 16 encompassed in that form of photo ID? 17    A. No. I'm not familiar with what the military 18 has by way of identification cards. 19    Q. Could you describe what a citizenship 20 certificate is? 21    A. No. 22    Q. Do you know how much it cost to obtain one? 23    A. No. 24    Q. Do you know how much it cost to obtain a US 25 passport?	145	1     in terms of restrictive number of photo IDs that may be 2 used? 3     A. You know, I have a general impression that the 4 Texas law is as strict as any, but I can't tell you that 5 I'm able to compare the list of photo IDs between the 6 two forms of -- the two legislation and say one is 7 stricter than the other. 8     Q. Could you tell me what the term legislative 9 emergency means within the Texas legislature? 10    A. Whatever the governor says it means. 11    Q. Are there any constraints on what the governor 12 can declare a legislative emergency? 13    A. Apparently not. 14    Q. What do you mean by that? 15    A. Well, just because of what happened last 16 legislative session. It seems to be simply a matter of 17 his legislative priorities. 18    Q. Was photographic voter ID declared to be a 19 legislative emergency for the 82nd legislature? 20    A. I believe so. 21    Q. When did you first learn about that? 22    A. Whenever he announced it, whenever that would 23 have been. 24    Q. Are you aware of any conversations related to 25 that decision to include it in the emergency call?	147
1     A. I don't know. It's hundreds of dollars. I 2 don't know. 3     Q. And do you know -- 4     A. I can't remember exactly how much, but -- 5     Q. Thank you. 6     A. Yeah. 7     Q. Do you know what documents you need to present 8 to get a US passport? 9     A. No, I don't remember. 10    Q. I believe you testified earlier -- 11    A. My wife would be better at this than I. 12    Q. I believe you testified earlier that you're 13 familiar with a Georgia photo ID law; is that right? 14    A. I testified that I think that is one of the 15 Section 5 states that has a strict photo ID requirement. 16    Q. Have you reviewed that? Do you remember ever 17 having reviewed that law? 18    A. I'm sure I did. I'm sure -- I don't remember 19 exactly what's in it, but I'm sure I did. 20    Q. Did you ever review the Indiana photo ID law? 21    A. I'm sure I did. I don't remember if I review 22 the bill language or stuff like the opinion itself that 23 described the law. 24    Q. As you sit here today, do you recall whether 25 Senate Bill 14 is stricter than the Georgia photo ID law	146	1     A. No. 2     Q. Do you know why Governor Perry designated voter 3 ID as a legislative emergency? 4     MR. FREDERICK: Objection. Relevance. 5     Objection. Calls for speculation. 6     Q. You can answer. 7     A. No, other than the obvious. 8     Q. The obvious being? 9     A. That his constituents wanted him to. 10    Q. Has any election law to your knowledge ever 11 been declared an emergency before voter ID? 12    A. Not that I recall. 13    Q. And when an issue area or bill is declared an 14 emergency, what are the consequences in terms of 15 scheduling consideration of the bill? 16    A. Oh, I think you can just begin -- if I recall 17 correctly, begin hearings on it earlier and the House 18 can take it up earlier. It's just a matter of being 19 able to get right on it. 20    Q. Does it mean that the legislature can consider 21 the issue within the first 60 days of session? 22    A. I believe so. 23    Q. Do you have any knowledge other than 24 constituent desire for this bill to be passed to which 25 you've testified why there was a need to consider this	148



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<p>1 legislation within the first 60 days of 2011?</p> <p>2 A. Well, I think, you know, there's so much</p> <p>3 concern expressed about the way that the bill had died</p> <p>4 in the prior legislative session that everybody</p> <p>5 understood that there was going to be a need to consider</p> <p>6 this bill early rather than late under totally different</p> <p>7 political circumstances and get it out of the way, move</p> <p>8 onto other things.</p> <p>9 Q. Would Senate Bill 14 refer to the committee of</p> <p>10 the whole Senate?</p> <p>11 A. I don't remember, but I think so. I was not</p> <p>12 involved in it as much last session.</p> <p>13 (Exhibit US-108 marked.)</p> <p>14 Q. Could you mark this. US-108? You've been</p> <p>15 handed what's been marked US-108. Do you recognize what</p> <p>16 this is?</p> <p>17 A. I suppose it's information about the bill.</p> <p>18 Goodness gracious. Lots of activities, huh?</p> <p>19 Q. Do you know why Senate Bill 14 was referred to</p> <p>20 the committee of the whole Senate rather than state</p> <p>21 affairs?</p> <p>22 A. No.</p> <p>23 Q. Did you attend the Senate hearing on</p> <p>24 January 25th?</p> <p>25 A. I don't believe so.</p>	<p>149</p> <p>1 Q. How did that come about?</p> <p>2 A. Just a political favor from Patricia who</p> <p>3 realized the situation I had been put in the prior</p> <p>4 session.</p> <p>5 Q. So she allowed you to be a sponsor even though</p> <p>6 she was the primary sponsor?</p> <p>7 A. Yeah. That's typical. A sponsor is someone</p> <p>8 who's, you know, thought to be a leader in the</p> <p>9 legislation, but in reality, it's the actual author or</p> <p>10 sponsor that does the work.</p> <p>11 Q. So why did you decide to sponsor a bill that</p> <p>12 was so dramatically different from what you had been</p> <p>13 advancing in 2009?</p> <p>14 MR. FREDERICK: Objection. Legislative</p> <p>15 privilege. Instruct you not to answer.</p> <p>16 THE WITNESS: Okay.</p> <p>17 Q. Are you following the advice of counsel?</p> <p>18 A. Yes.</p> <p>19 Q. How it did come to be that Patricia Harless was</p> <p>20 the main sponsor of the bill?</p> <p>21 MR. FREDERICK: Object to the extent that</p> <p>22 your answer would reveal any privileged communication.</p> <p>23 If you can answer without revealing privileged</p> <p>24 communication, you may do so.</p> <p>25 A. My sense is that she was chosen because she's a</p>
<p>1 Q. Are you aware of any conversations Senator</p> <p>2 Williams had with Ann McGeehan related to conducting</p> <p>3 analysis of which voters did not have a driver's</p> <p>4 license?</p> <p>5 A. No.</p> <p>6 Q. Did you ever come to learn of -- there was a</p> <p>7 certain name of registered voters who could not be</p> <p>8 matched on the driver's license list in October of 2011?</p> <p>9 MR. FREDERICK: Objection. Vague. You</p> <p>10 may answer.</p> <p>11 A. I'm not sure I understand the question. Are</p> <p>12 you saying am I aware of the fact that there are a lot</p> <p>13 of legal voters that do not have driver's licenses?</p> <p>14 Q. My question is whether you are aware of the</p> <p>15 elections division having matched the voter registration</p> <p>16 rolls against the driver's license databases to</p> <p>17 determine which registered voters could not be matched</p> <p>18 with the record in the driver's license database.</p> <p>19 A. No.</p> <p>20 Q. Did that ever come to your attention at all?</p> <p>21 A. No. I was not very actively involved in</p> <p>22 legislation in 2011.</p> <p>23 Q. You were a sponsor of Senate Bill 14 in the</p> <p>24 House though; were you not?</p> <p>25 A. Yes.</p>	<p>150</p> <p>1 active leader in the Texas Federation of Republican</p> <p>2 Women, and this was one of their legislative priorities</p> <p>3 and that she would because of her delightful personality</p> <p>4 and pleasant demeanor be a good person to put at the</p> <p>5 front mike on legislation of this type.</p> <p>6 Q. Is there any other reason you can think of</p> <p>7 sitting here today?</p> <p>8 A. No.</p> <p>9 Q. Was Senate Bill 14 referred to the House select</p> <p>10 committee on voter identification and voter fraud?</p> <p>11 A. I believe so.</p> <p>12 Q. Why was it referred to that committee?</p> <p>13 MR. FREDERICK: Objection. Legislative</p> <p>14 privilege. Do not reveal the contents of any</p> <p>15 communication with another legislator about SB14. If</p> <p>16 you can answer without doing that, you may.</p> <p>17 A. I think really that's kind of like -- that's</p> <p>18 the same question as why was a committee formed. Once a</p> <p>19 committee was formed, it was clear that the bill would</p> <p>20 be referred to that committee.</p> <p>21 Q. Bear with me one moment. Are you doing okay?</p> <p>22 A. Yeah, I'm good.</p> <p>23 (Exhibit US-109 marked.)</p> <p>24 Q. Representative Smith, you've been handed what's</p> <p>25 been marked as US-109. Do you recognize this document?</p>



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1 A. No. I recognize what it is, but I don't know 2 if I've ever seen it before. 3 Q. Could you describe what it is? 4 A. Just a portion of a House Journal dated -- from 5 Monday, March 21st. 6 Q. Turning your attention to Page 918 of this 7 document, are you there? 8 A. M-hm. 9 Q. Were you on the -- Strike that. Was this the 10 House Journal of the proceedings on the House floor? 11 A. Yes. 12 Q. Were you on the House floor during this debate? 13 A. I believe so. Well, I know I was generally -- 14 I don't know that I was on the House floor every minute 15 of it, but I do recall being there. 16 Q. And do you see an exchange between 17 Representative Harless and Representative Anchia about 18 two-thirds of the way down the page concerning whether 19 there are any studies conducted by any state agency 20 about the number of voters that lack required 21 identification and the racial breakdown of those voters? 22 A. I see it, yes. 23 Q. Do you recall reading from this exhibit hearing 24 that exchange between the two representatives? 25 A. No.	153	1 national secondary sources related to this issue, and 2 I'm sure that to the extent that I want to recall that, 3 there are at least some attempts to quantify the extent 4 to which that is the case. I don't recall specifically 5 what they were, so I -- at the time of this debate on 6 the House floor two years later, I would have previously 7 been exposed to probably what existed in that regard. 8 Q. That was with regard to voters outside of the 9 State of Texas? 10 A. I think so. 11 Q. So was that outside of Senate Bill 14? 12 A. I think so. 13 Q. Was that outside of Senate Bill 362? 14 A. Yes. I think this was kind of anything that 15 there was available to read. I think even the Supreme 16 Court decision in the Indiana case may have gotten into 17 whatever data is available on those kinds of questions, 18 although maybe not since it wasn't a Section 5, but, you 19 know, I do believe that I have been exposed to the 20 arguments that it would have a disproportionate effect 21 on minority voters. You know, I think that's really 22 kind of a matter of -- in terms of the -- you know, if 23 you are asking does the -- We never were even able to 24 quantify what percentage of registered voters do not 25 have a driver's license, and there were various	155
1 Q. Do you see that Representative Anchia asked 2 Representative Harless if she was aware of any studies 3 conducted by any state agency about the number of voters 4 that lacked the required ID? 5 A. Yes. 6 Q. And what percentage of those voters are 7 African-American or Hispanic? 8 A. Yes. 9 Q. Do you see Representative Harless indicated 10 that she was unaware in testimony of any studies? 11 A. Yes. 12 Q. And that, further, she was -- she was unaware 13 of the existence of any other studies? 14 A. Yes. 15 Q. To your knowledge was Representative Harless 16 aware of any studies of this nature? 17 MR. FREDERICK: Objection. Calls for 18 speculation. 19 A. I don't know. 20 Q. Were you aware of any studies of this nature at 21 the time of this hearing? 22 A. At this time of this hearing? 23 Q. Yes. 24 A. You know, I would have during the prior session 25 when I was involved in the issue read a number of	154	1 different estimates. I know I've seen that in other 2 states as well, you know, estimates anywhere from 3 10 percent to, you know, less than 1 percent. I think 4 I've strayed from your question, but -- so go ahead. 5 Q. It's caused me to think of another question 6 which is do you know specifically the studies that you 7 read about impact of photo ID on minority voters? 8 A. No. 9 Q. Do you know when you read those studies? 10 A. Yeah. Everything I did would have been in 11 2009. 12 Q. What was the conclusion of those studies? 13 A. I don't know that there was only one conclusion 14 to the studies. You know, there be a study for every 15 conclusion you want to reach. I don't remember. You 16 know, to me, again, if the question is are the people 17 that do not have photo IDs more likely to be minorities 18 than those that are not, I think it is a matter of 19 common sense that they would be. I don't really need a 20 study to tell me that. 21 Q. Do you think that that view, which you 22 described sort of as a common sense view, was held by 23 other legislators in the House. 24 MR. FREDERICK: Objection. Relevance. 25 Objection. Legislative privilege. To the extent it	156



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157	<p>1 will require you to reveal communications or another    2 legislator's thought process, I instruct you not to    3 answer.</p> <p>4 Q. Are you following your counsel's advice?</p> <p>5 A. Yes.</p> <p>6 Q. Are you aware of any communications about the    7 fact that minorities are less likely to have photo ID.</p> <p>8 MR. FREDERICK: Objection. Vague.</p> <p>9 A. I mean --</p> <p>10 Q. Amongst legislators.</p> <p>11 A. Yeah. Just, again, primarily from opponents of    12 the legislation.</p> <p>13 Q. Are you aware of any supporters of photo ID    14 being a party to any of those communications.</p> <p>15 A. I would have been, just listening.</p> <p>16 Q. Are you aware of any other supporters of photo    17 ID besides you being present in those communications.</p> <p>18 A. I imagine every member of the elections    19 committee would have been there when those arguments    20 were being made as a matter of testimony.</p> <p>21 Q. Turning back to US-109, which was dated March    22 21st; was it not?</p> <p>23 A. Yes.</p> <p>24 Q. Turning back to US-108, when did Senate Bill 14    25 pass the House?</p>
158	<p>159</p> <p>1 MR. FREDERICK: Objection. Assumes facts    2 not in evidence.</p> <p>3 Q. Did you ever hear about that at all?</p> <p>4 A. No, not until today. Not that I recall.</p> <p>5 Q. I will represent to you that Ann McGeehan in    6 her deposition yesterday testified that such a match had    7 been conducted and that it indicated that around 700,000    8 voters did not have access -- that were on the voter    9 registration rolls did not have a driver's license.</p> <p>10 A. Currently, yeah.</p> <p>11 Q. Yes.</p> <p>12 A. In that month.</p> <p>13 MR. FREDERICK: Objection. Assumes facts    14 not in evidence.</p> <p>15 Q. Does that testimony surprise you?</p> <p>16 A. Not really. I mean, I knew -- my own    17 calculation was that it was 700,000 people, and I didn't    18 really know precisely how many. It depended on which    19 estimate you used of what percentage of, you know,    20 registered voters do not have driver's licenses, but    21 just my extrapolation from estimates that seemed more    22 reliable from other states. I think it may have been in    23 the Indiana and Supreme Court opinion and then kind of    24 presuming something about the nature of Texas's    25 population.</p> <p>160</p> <p>1 So it might -- I think it may have been a    2 2 percent figure or something like that in that Supreme    3 Court opinion, and so my presumption was it was    4 something higher than that because of the nature of our    5 population.</p> <p>6 And so I -- you know, I think you'll see    7 if you get that slide show projection, I may have    8 actually, you know, estimated in that slide show    9 projection that it was 700,000 people that did not have    10 a photo ID.</p> <p>11 Q. When did you conduct that analysis?</p> <p>12 A. 2009. Everything I did on this was in 2009.</p> <p>13 Q. And how did you conduct that analysis?</p> <p>14 A. Again, I think just from something I read there    15 was a reliable estimate of another state of the    16 percentage of people that were legal voters that did not    17 have a photo ID, and I took that percentage, and I    18 doubled it or something. And, you know, I mean, some of    19 the states that -- you know, there was -- Again, I think    20 I've already testified there were estimates as low as    21 less than 1 percent, as high as 10 percent, and so in    22 reading it all if you come up with something in between    23 you come up with something close to what you are talking    24 about. That may be a little higher than I anticipated,    25 but I may have been thinking four or 500,000.</p>



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<p>1 Q. Who in your office conducted that analysis?</p> <p>2 A. Me.</p> <p>3 Q. And did you -- other than the --</p> <p>4 A. Back of the envelope kind of analysis, I can assure you, but --</p> <p>5 Q. In the -- in the -- Other than the Power Point you just testified to that was listed in the privilege log that you testified about earlier, did you memorialize that analysis in writing anywhere?</p> <p>6 A. No. But I probably would have mentioned it in committee hearings.</p> <p>7 Q. And which committee hearings did you mention that in; do you remember?</p> <p>8 A. I don't know, but just anyone where we were discussing voter ID.</p> <p>9 Q. Did you share any of your Power Points that you prepared for these communications with constituent groups, with any of your colleagues in the legislature?</p> <p>10 A. It seems like I just ran it by the speaker's office before I went out and did it --</p> <p>11 Q. Did you share --</p> <p>12 A. -- because I felt that was appropriate for me to at least let them know what I was going out in the public while he was a committee chairman and present.</p> <p>13 Q. Would that have been, I believe, after your</p>	<p>161</p> <p>1 A. I'm just -- I'm not recalling specifically doing that. I wouldn't be surprised that I did.</p> <p>2 Q. Do you recall having any conversations with any members about your analysis?</p> <p>3 A. Sure. I mean, I would have -- I don't recall specific conversations, but I'm sure I would have had discussions like that.</p> <p>4 Q. Would they have been with members of the House elections committee?</p> <p>5 A. Probably.</p> <p>6 Q. Would they have been with any other members of the House?</p> <p>7 A. Probably.</p> <p>8 Q. Did you have any conversations with members of the senate or their staff?</p> <p>9 A. I don't really recall having any conversations with members of the Senate other than Wendy Davis and Fraser. There may have been others that I don't remember, but those are the ones that I remember.</p> <p>10 Q. Do you think you shared any of this analysis with Senator Fraser or his staff?</p> <p>11 A. I don't recall whether I did or not.</p> <p>12 Q. Did you share any of this analysis with Patricia Harless or her staff?</p> <p>13 A. I don't remember. Gave her my notebook, I</p>
<p>1 primary election?</p> <p>2 A. Yes.</p> <p>3 Q. And was that in 2009?</p> <p>4 A. '10.</p> <p>5 Q. In '10. Okay.</p> <p>6 A. Yes.</p> <p>7 Q. And so you went out with the Power Point and you showed it to the senator -- to Speaker Straus in advance of this presentation?</p> <p>8 A. Not him personally. I think I probably sent it to Denise in his office.</p> <p>9 Q. What is Denise's last name?</p> <p>10 A. Davis.</p> <p>11 Q. Did you send it to anyone other than Speaker Straus in the legislature?</p> <p>12 A. I don't believe so.</p> <p>13 Q. Did you send it to anyone on the Senate side?</p> <p>14 A. I may have after I gave the presentation sent it to constituents. People may have asked me for it.</p> <p>15 Q. Some constituents?</p> <p>16 A. But, no, I don't recall giving it to any other member. I don't think anyone would care to look at it.</p> <p>17 Q. And you made an oral presentation or reference to the data in committee hearings in 2009, is that correct, or 2010?</p>	<p>162</p> <p>164</p> <p>1 remember that, and we had some conversations. But I don't remember whether we talked about how many people don't have driver's licenses that are legal voters.</p> <p>2 Q. Did you share any of this information with Mr. Dewhurst's office and, in particular, Brian Abair or any other staff people?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Did you in doing this analysis try to determine whether there was going to be a disproportionate impact on minority voters?</p> <p>5 A. I don't -- I mean, again, I don't think any effort was made to quantify the precise extent to which that was going to occur, but I think, you know, that it was a matter of common sense that however many hundreds of thousands of people we were talking about was -- was disproportionately poor and, therefore, minority.</p> <p>6 Q. So did you have a concern based on, you know, your experience as an attorney, your knowledge of Section 5 and this analysis that you conducted in 2009, that -- and based on your common sense view that poor people are less likely to have photo ID and, therefore, be minorities, that this legislation would have difficulty being pre-cleared by the Justice Department?</p> <p>7 MR. FREDERICK: Objection. This is getting into specific legislation. I instruct you not</p>



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<p>1 to answer on the basis of legislative privilege.  2 Q. Are you following your counsel's advice?  3 A. Yes.  4 Q. Are you familiar with Spanish Surname  5 Registered Voter Analysis?  6 A. I probably am, if you'll remind me.  7 Q. Unfortunately, I have to ask you the questions  8 and you have to answer the questions, so I can't remind  9 you.  10 A. Okay. I mean, I feel like I have had  11 discussions about it, and Rafael has probably educated  12 me about it, but I can't remember.  13 Q. Okay. Thank you for your testimony. Was there  14 a strategy to ensure that Senate Bill 14 would be passed  15 on the House floor?  16 MR. FREDERICK: Objection. Legislative  17 privilege. Instruct you not to answer.  18 Q. Are you following your counsel's advice?  19 A. Yes.  20 Q. Was there any effort to get around the chubbing  21 problem of 2009?  22 MR. FREDERICK: I'm going to object to the  23 extent it would require you to disclose confidential  24 communications or any legislator's thought process, and  25 to the extent that you can answer without revealing that </p>	<p>165</p> <p>1 A. What would happen? I'm not sure I understand  2 the question.  3 Q. To avoid the chubbing. You were talking that  4 Representative Dunnam --  5 A. Offered. In other words, the Democrats clearly  6 had the ability to kill the bill. At some point it was  7 clear that they could talk the clock out. So they were  8 offering -- They were offering several things. I don't  9 recall them all. The one that was most meaningful to me  10 of which I was later accused of was the offer by Dunnam  11 to have the Betty Brown bill -- to end the chubbing and  12 have that bill brought to the floor and argued by both  13 sides without amendment and then have a vote up or down.  14 And the Republican caucus would not agree do that, and I  15 think that was the right decision on their part -- on  16 our part, and -- and that was to -- because you  17 shouldn't have to, you know, negotiate with terrorists,  18 and, you know -- you know, smiling when I say that, but,  19 you know, that would be bad precedent to sit -- and you  20 are supposed to be able to amend bills.  21 But what it did allow me to demonstrate to  22 my constituents is that it really was my version of the  23 bill that they were most concerned about actually having  24 a chance to pass rather than the Betty Brown bill. They  25 knew they didn't have the votes, that the Betty Brown </p>
<p>1 matter, you can do so.  2 A. There were offers made by Democrats to the  3 Republicans of a variety of types to -- which would have  4 if accepted ended the chubbing, if that answers your  5 question.  6 Q. Not really. Was it horsetrading on other  7 bills?  8 A. No. It was really this bill. I mean, Dunnam  9 offered in writing to the caucus --  10 MR. FREDERICK: Okay.  11 Q. It was in writing, and it's on the record?  12 A. It's probably -- I think it's part of my slide  13 show presentation.  14 MS. PERALES: Can't wait.  15 A. Exactly, because I was basically trying to help  16 my constituents understand that the Republican caucus  17 had the opportunity to have the Betty Brown bill, the  18 hard photo ID bill, voted up or down the House floor,  19 and chose not to do that as just another indication of  20 the point that I was making was that that bill did not  21 have the votes.  22 Q. So can you explain what happened in terms of  23 ensuring that the bill would be passed on the House  24 floor because I'm not really clear in that  25 understanding? </p>	<p>166</p> <p>1 bill would not pass, but my amendment might very well  2 have gotten the marginal votes and in my opinion would  3 have been better for everybody at that time, but, you  4 know, it's -- that's water under the bridge.  5 Q. Your testimony was about 2009 and not 2011; is  6 that right?  7 A. 2009.  8 Q. Okay.  9 A. Not 2011. That offer was not relevant or made  10 in 2011 because the terrorists had lost power. They  11 didn't have they power.  12 Q. Was there -- So is it your testimony that there  13 didn't have to be a strategy for getting Senate Bill 14  14 passed on the House floor because the Republican had the  15 votes?  16 A. Yes. I think you'd really have to -- It was a  17 foolproof majority. I don't know how you could screw  18 that up.  19 Q. Did you participate in the House floor debate  20 on the bill?  21 A. No.  22 Q. Did you vote to table amendments that were  23 offered?  24 A. I followed Patricia's lead.  25 Q. Did you review or give any significant </p>



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1 substantive thought to any of the amendments or did you 2 follow her -- 3 A. I was available and talked to Patricia on the 4 floor as things were coming up, if she had a question. 5 Q. Do you recall an amendment that would have 6 prohibited fees -- charging fees for the underlying 7 documents needed to obtain an election identification 8 certificate? 9 A. I don't specifically recall that, but I'm not 10 surprised by it. I don't doubt that there was one. 11 Q. Can we go off the record? 12 A. Can I say for myself on the record that I was 13 not really referring to my democratic friends as 14 terrorists. 15 MS. WESTFALL: Let's go off the record. 16 (Recess from 2:14 p.m. to 2:28 p.m.) 17 (Exhibit 110 marked.) 18 Q. (BY MS. WESTFALL) Could you please mark this as 19 US Exhibit 110? You've been handed what's been marked 20 US Exhibit 110. Do you recognize this document? 21 A. I recognize what it is. 22 Q. Could you describe it for the record? 23 A. It's a portion of -- or perhaps all -- I don't 24 know -- but a portion at least of the House Journal 25 dated March 23rd, 2011, my birthday.	169	1 specifically it happening, but it did. 2 Q. Could you describe what the amendment would 3 have accomplished? 4 A. It would have added to the photo IDs that could 5 be used. 6 Q. Do you recall how you voted on this amendment? 7 A. It looks like I voted yes to table. 8 Q. Do you know why you voted that way? 9 MR. FREDERICK: Objection. Legislative 10 privilege. Instruct you not to answer. 11 Q. Are you following the advice of counsel? 12 A. Yes. 13 Q. Do you know generally why student ID wasn't 14 included in Senate Bill 14? 15 MR. FREDERICK: Objection. Legislative 16 privilege. Instruct you not to answer. 17 Q. Are you following the advice of counsel? 18 A. Yes. 19 Q. Turning your attention to Amendment 50 at Page 20 1009. Do you see that amendment offered by 21 Representative Raymond? 22 A. M-hm. Yes, ma'am. 23 Q. Are you familiar with this memo? 24 A. No. 25 Q. Turning your attention to House Journal 1015	171
1 Q. Oh. Do you recall that this was the day when 2 the House considered an amendment to Senate Bill 24? 3 A. I wouldn't have recalled that. 4 Q. Directing your attention to Page 969 of this 5 document about Amendment 15. 6 A. M-hm. 7 Q. Could you take a look at Amendment 15 and let 8 me know if you recall this amendment? 9 A. You referred to it earlier in the deposition, 10 it looks like. 11 Q. Do you remember how you voted on this 12 amendment? 13 A. I'm sure I followed Patricia. It looks like I 14 did. 15 Q. And could you explain why? 16 MR. FREDERICK: Objection. Legislative 17 privilege. Instruct you not to answer. 18 Q. Are you following the advice of counsel? 19 A. Yes. 20 Q. Turning your attention now to Page 979 of this 21 document at Amendment 23, are you familiar with this -- 22 with this amendment? 23 A. 23? 24 Q. Yes. 25 A. I'm familiar with what it does. I don't recall	170	1 and 16, do you see Amendment 54? 2 A. Yes. 3 Q. Are you familiar with this amendment offered by 4 Representative Alvarado? 5 A. I don't know what you mean by familiar with. I 6 don't recall it. 7 Q. Okay. Thank you. Do you recall any amendments 8 offered on the House floor to Senate Bill 14 that would 9 have mitigated the effect of the bill on racial or 10 ethnic minorities? 11 A. Say that one more time. 12 Q. Do you remember any amendment to Senate Bill 14 13 being offered on the House floor that were adopted that 14 would have mitigated the impact of the bill on minority 15 voters? 16 MR. FREDERICK: I'm going to object 17 based -- it assumes facts not in evidence. Also, going 18 to object to the extent that any answer would imply 19 Representative Smith's thoughts and mental impressions 20 about specific amendments. I would, therefore, instruct 21 you not to answer on the basis of privilege. 22 Q. Are you going to follow his instruction? 23 A. Yes. 24 Q. Turn your attention to Amendment 58 on Page 25 House Journal 1021. Do you see that Representative	172



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1 Anchia offered an amendment? 2 A. Yes. 3 Q. Do you recall this amendment? 4 A. No. 5 Q. Based on your -- Could you take a quick look at 6 that amendment? 7 A. Okay. 8 Q. Have you had a chance to review it? 9 A. Yes. 10 Q. Could you describe what this amendment would do 11 generally speaking? 12 A. Says that the bill does not take effect until 13 the later of January 1st, 2012 or the dates on which the 14 Secretary of State completes a study providing a lot of 15 information about the effect of the legislation on 16 voters. 17 Q. How did you vote on this amendment? 18 A. I voted yes to table. 19 Q. Do you know why you voted that way? 20 MR. FREDERICK: Objection. Legislative 21 privilege. Instruct you not to answer. 22 Q. Are you following the advice of counsel? 23 A. Yes. 24 Q. Do you think this information was necessary to 25 gather in conjunction with submitting the bill once it	173	1 possession of a US military card? 2 A. No. 3 Q. Are you aware of any document or report that 4 identifies how many Texas voters are in possession of a 5 passport? 6 A. No. 7 Q. Are you aware of any document or report that 8 identifies how many Texas voters are in possession of a 9 citizenship certificate that has a photo? 10 A. No. 11 Q. Other than what you've testified about today -- 12 Actually, strike that. 13 Could you tell me every single purpose 14 that you're aware of for Senate Bill 14, legislative 15 purpose? 16 A. Ensuring that every vote that is cast is a 17 legal vote and deterring -- making it more difficult for 18 someone to cast an illegal vote and providing the 19 required identification without any financial burdens 20 associated with it other than the costs associated with 21 travel, I suppose, and whatever documents are required 22 to get the document. You know, I think that's it. 23 Q. So other than -- and we -- You've testified at 24 great length about any facts such as they exist related 25 to ensuring all those are legal. Is there any other	175
1 was passed for Section 5 preclearance? 2 MR. FREDERICK: Objection. Legislative 3 privilege. Instruct you not to answer. 4 Q. Are you following counsel's advice? 5 A. Yes. 6 Q. Are you aware of any communications about the 7 demographics -- the racial demographics of who possesses 8 a license to carry license in the State of Texas? 9 MR. FREDERICK: Objection. Vague. You 10 may answer. 11 A. No. 12 Q. Are you aware of any conversations about 13 speculation about the racial demographics of that group? 14 MR. FREDERICK: Objection. Vague. You 15 may answer. 16 A. The right to carry? 17 Q. Correct. 18 A. You mean a concealed handgun license? 19 Q. Yes. 20 A. Am I aware of any conversations where people 21 speculated about the demographic make-up of that group? 22 Q. Correct. 23 A. No. 24 Q. Are you aware of any existing document or 25 report that identifies how many Texas voters are in	174	1 factual information that you have that would support the 2 connection between Senate Bill 14 and ensuring all votes 3 are legal that you haven't already testified about 4 today? 5 A. No. 6 Q. In terms of deterring illegal voting, you've 7 testified about that today. Are there any other facts 8 or information that you could supply that would support 9 Senate Bill 14 achieving that purpose of deterring an 10 illegal vote? 11 MR. FREDERICK: Objection. Vague. You 12 may answer. 13 A. I gave Patricia a whole folder or multiple 14 folders of documents that I had collected in the prior 15 session, and I was kind of reviewing in anticipation of 16 the possibility of ending up on the floor with this 17 bill, and I'm sure there's, you know -- John Fund is his 18 name. You probably already knew that, but, you know, 19 you can read his book and whatever you want. I imagine 20 that to the extent that there is evidence to support 21 that sort of thing, it is likely to be mentioned in that 22 book, but there's a number of sources, and there is 23 probably information in that packet of some additional 24 evidence that I have not talked about today of voter 25 fraud, you know, again, some of it more credible than	176



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<p>1 others.</p> <p>2 Q. Was that voter fraud in Texas or outside of</p> <p>3 Texas or both?</p> <p>4 A. Probably both, at least questions about the</p> <p>5 possibility of voter fraud.</p> <p>6 Q. When did you supply that to Representative</p> <p>7 Harless?</p> <p>8 A. Right when she started -- when she was first</p> <p>9 appointed to handle that legislation.</p> <p>10 Q. Would that have been in January 2011?</p> <p>11 A. Early -- The early session 2011. I don't</p> <p>12 remember if it was January or February, but early.</p> <p>13 Q. Can you describe the election identification</p> <p>14 certificate under Senate Bill 14?</p> <p>15 A. No. I mean, it's my understanding that this</p> <p>16 just would be a unique new card that would be created to</p> <p>17 use for the sole purpose of voting.</p> <p>18 Q. And I believe you -- Go ahead.</p> <p>19 A. A photo -- It would include a photo and</p> <p>20 presumably additional identifying information, but I</p> <p>21 don't know precisely what.</p> <p>22 Q. Where would you obtain that document?</p> <p>23 A. Wasn't it like DPS locations?</p> <p>24 Q. Was it a driver's license office?</p> <p>25 A. I don't remember.</p>	<p>1 of now associated with getting an election</p> <p>2 identification certificate?</p> <p>3 A. You know, I mean, the cost of obtaining the</p> <p>4 documents to get the ID, to -- you know, I don't know if</p> <p>5 travel is involved in getting -- in getting the</p> <p>6 documents, to get the photo ID, but you may have travel</p> <p>7 involved there, I don't know. If that is stuff that's</p> <p>8 handled by the mail or must involve travel, but so other</p> <p>9 than travel to get the required photo ID and/or the</p> <p>10 documents that are necessary to get the photo ID and the</p> <p>11 cost of the documents to get the photo ID, I'm not aware</p> <p>12 of anything else.</p> <p>13 Q. Are you aware of the fact that you may have to</p> <p>14 go to a driver's license office during business hours</p> <p>15 only?</p> <p>16 A. Yes. I presume that would be the case.</p> <p>17 Q. And for person who work during the day, it</p> <p>18 might being a burden to obtain time off to travel during</p> <p>19 business hours to a driver's license office; isn't that</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. And, also, have you been to a driver's license</p> <p>23 office recently to renew your driver's license?</p> <p>24 A. Depends on your definition of recently, but I</p> <p>25 have been to one whenever the deadline was here in</p>



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181	<p>1 was actually some discussion on the House floor from    2 people that were concerned about additional cuts where    3 they were having complaints from constituents about long    4 lines.</p> <p>5 MS. WESTFALL: Thank you. I think at this    6 time other than we're going to keep the deposition open    7 because, obviously, we have some disagreements about    8 privilege issues, I will turn over the podium to my    9 co-counsel. Would you like to switch seats?</p> <p>10 MS. PERALES: Yes, please.    11 (Exhibit RODRIGUEZ-15 marked.)    12 EXAMINATION    13 BY MS. PERALES    14 Q. Good afternoon, Representative Smith. My name    15 is Nina Perales, and I work with the Mexican American    16 Legal Defense Fund, and in this case I represent a group    17 of parties called the Rodriguez Intervenors. I am going    18 to try very hard to skip any of the material that you've    19 already testified about with Ms. Westfall, so some of my    20 questions might seem like they are moving around a    21 little randomly, but that is so we can get to the end    22 more quickly.</p> <p>23 I'd like to look at the 2005 bill and just    24 ask you a question about that. That's HB1706. And you    25 were on the committee in 2005, but my understanding is</p>	183
182	<p>1 that HB1706 initially was sent to a subcommittee, so I    2 know that you might not be as completely familiar with    3 it.</p> <p>4 Does anybody know what the last Rodriguez    5 exhibit was yesterday? We'll start with 15. I'd like    6 to mark this Rodriguez 15. The court reporter has    7 handed you what has been marked Rodriguez Deposition 15,    8 which will represent to you is the introduced version    9 of HB1706 in 2005 sponsored by Ms. Denny, and my    10 question for you -- And I will also represent to you    11 that you voted for this bill in committee. In fact, I    12 believe Representative Anchia may have been the only    13 person in the committee who didn't vote for it. I don't    14 know if that helps refresh your recollection.</p> <p>15 A. No. It doesn't. That surprises me.</p> <p>16 Q. And you will see -- starting on the third page    17 of the bill, you'll start to see the list of documents    18 that will prove identity of a voter.</p> <p>19 A. M-hm.</p> <p>20 Q. So there's a list under A and a list under B.</p> <p>21 A. M-hm.</p> <p>22 Q. And so I believe you testified earlier that    23 this seems like a fairly typical list in 2005 of the    24 types of non-photo ID that would be acceptable; is that    25 correct?</p>	184



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<p>1 A. Yes.</p> <p>2 Q. Is it your understanding that you had the trust</p> <p>3 of Speaker Straus in 2009 when he named you chair of the</p> <p>4 elections committee?</p> <p>5 A. I believe I do.</p> <p>6 Q. And without revealing the content of the</p> <p>7 conversation, did you come to understand in 2009 that</p> <p>8 Speaker Straus was entrusting with the responsibility to</p> <p>9 pass a voter ID bill?</p> <p>10 A. He was asking me to do my best. I don't know</p> <p>11 about trusting me about the responsibility. I think</p> <p>12 everybody understood it was an uphill battle.</p> <p>13 Q. It was a very controversial issue, wasn't it?</p> <p>14 A. It was very controversial.</p> <p>15 Q. In fact, it might have been the most</p> <p>16 controversial issue of the '09 session; don't you think?</p> <p>17 A. Yes. Clearly.</p> <p>18 Q. Do you recall any other controversial issues</p> <p>19 that were being debated in '09?</p> <p>20 A. Always abortion.</p> <p>21 Q. True.</p> <p>22 A. But I don't -- that was just a dominating issue</p> <p>23 in that session from a public relations standpoint in</p> <p>24 terms of what you read about it in the newspaper.</p> <p>25 Q. And by that, you mean voter ID?</p>	185	<p>1 A. Yes.</p> <p>2 Q. Okay. And you've also testified today that you</p> <p>3 did quite a bit of research into topics related to voter</p> <p>4 ID, and so I want to follow up on that a little bit.</p> <p>5 You testified earlier that -- Well, I'll ask you, do you</p> <p>6 know what a certificate of citizenship is?</p> <p>7 A. No.</p> <p>8 Q. But it is listed as one of the forms of photo</p> <p>9 ID that is acceptable for voting, yes, in this bill?</p> <p>10 Let's go to Page 6.</p> <p>11 A. Yeah. "A United States citizenship certificate</p> <p>12 issued to the person that contains the person's</p> <p>13 photograph."</p> <p>14 Q. Okay. And so SB362 specifically adds the word</p> <p>15 certificate to the pre-existing law and the words that</p> <p>16 contains the person's photograph, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And if the voter under this law could produce</p> <p>19 this document, it would be the only piece of ID</p> <p>20 necessary because it's on the first list, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know if this certificate of citizenship</p> <p>23 is different from the naturalization certificate?</p> <p>24 A. No.</p> <p>25 Q. Do you know that the United States citizenship</p>	187
<p>1 A. Yes.</p> <p>2 Q. How about immigration?</p> <p>3 MR. FREDERICK: Objection. Vague. But</p> <p>4 you may answer.</p> <p>5 A. I don't understand your question.</p> <p>6 Q. Was immigration and doing something about</p> <p>7 immigration a controversial issue in the '09 session?</p> <p>8 A. Sure. It didn't have the same level of</p> <p>9 visibility in that particular session, more so in the</p> <p>10 last one, but certainly by that time it had become a</p> <p>11 major issue.</p> <p>12 Q. Did you happen to notice over the past several</p> <p>13 sessions whether there was an increasing number of bills</p> <p>14 being introduced that aimed to affect immigrants or</p> <p>15 regulate immigration in the state?</p> <p>16 A. I presume that that's true.</p> <p>17 Q. Okay. So I'm going to ask you now about SB362,</p> <p>18 which is Exhibit US-29. Was this introduced? This is</p> <p>19 as it came out of the Senate. Okay. Well, I'm going to</p> <p>20 ask you to refer to US-29 so I can ask you a few</p> <p>21 questions about it.</p> <p>22 A. M-hm.</p> <p>23 Q. You testified previously that you were the</p> <p>24 chairman of elections when this bill, SB362, comes over</p> <p>25 from the Senate and lands in your committee. Yes?</p>	186	<p>1 certificate does not have a photograph on it?</p> <p>2 A. No.</p> <p>3 Q. So would it be fair to say then that you didn't</p> <p>4 look into this particular item of ID in the bill?</p> <p>5 MR. FREDERICK: Objection. Vague.</p> <p>6 A. I don't recall the extent to which we had</p> <p>7 testimony on that issue in front of the committee where</p> <p>8 we went through the photo IDs item by item, but it's</p> <p>9 possible.</p> <p>10 Q. And in terms of your own personal inquiry into</p> <p>11 the aspects of the bill, would you say you did not make</p> <p>12 any research or inquiry?</p> <p>13 MR. FREDERICK: I'm going to object on the</p> <p>14 basis of legislative privilege to the extent it's asking</p> <p>15 for his own investigation. Instruct you not to answer.</p> <p>16 Q. Do you know whether a legal permanent resident</p> <p>17 immigrant of the United States can get a concealed</p> <p>18 handgun license?</p> <p>19 A. No, I don't know.</p> <p>20 Q. You mentioned earlier that you were aware that</p> <p>21 a legal permanent resident immigrant could obtain a</p> <p>22 driver's license and drive in the State of Texas. Yes?</p> <p>23 A. I think that used to be the case, and I think</p> <p>24 it's not any longer.</p> <p>25 Q. A legal permanent resident, a green card</p>	188



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<p>1 holder?</p> <p>2 A. Oh, I don't know.</p> <p>3 Q. And you are aware that a legal permanent</p> <p>4 resident, immigrant young men and women do serve in the</p> <p>5 US military, correct?</p> <p>6 A. I don't know. I do not know, but I presuming</p> <p>7 you are right.</p> <p>8 MS. PERALES: Okay. We previously marked</p> <p>9 Rodriguez 11 in a prior deposition. Do you know</p> <p>10 whether -- well, do you know whether -- This is what I'm</p> <p>11 going to do. I'm going to give you a copy of what has</p> <p>12 previously been marked Rodriguez 11, and I'm going to</p> <p>13 hand the same to the witness. I am not going to remark</p> <p>14 this document. Oh, no, this is incorrect. I'm sorry.</p> <p>15 Hand it back, please. This is not what I asked for.</p> <p>16 I'm looking for a memo dated -- Do you have that? I</p> <p>17 think it was marked yesterday, and we're just trying to</p> <p>18 find it.</p> <p>19 MS. WESTFALL: We can go off the record</p> <p>20 for a minute.</p> <p>21 (Recess from 3:02 p.m. to 3:07 p.m.)</p> <p>22 (Exhibit RODRIGUEZ-16 marked.)</p> <p>23 Q. (BY MS. PERALES) Representative Smith, the</p> <p>24 court reporter has handed you what's been mark as</p> <p>25 Rodriguez Deposition Exhibit 16. Do you recognize this</p>	<p>191</p> <p>1 driver's license. Now, this is only as to people who</p> <p>2 had registered since 2006, but I was wondering if you</p> <p>3 had relied on that as part of what you testified earlier</p> <p>4 about.</p> <p>5 A. I doubt it. I don't think so. I think I</p> <p>6 remember my back of the envelope calculation was based</p> <p>7 on some kind of information I had received from national</p> <p>8 publications or Supreme Court opinions or something I</p> <p>9 had read about other State's that were different than</p> <p>10 Texas with fewer minorities, smaller proportion of poor</p> <p>11 population, and I just extrapolated from that apparently</p> <p>12 reliable data. I don't remember specifically what it</p> <p>13 was, but it seemed to me the most credible information I</p> <p>14 could find about other states that seemed credible, and</p> <p>15 I simply needed to make some judgment about how Texas</p> <p>16 would differ from that state, whichever one it was.</p> <p>17 Q. So if you look at the second group of numbers,</p> <p>18 it talks about the Secretary of State querying this</p> <p>19 statewide voter file and estimating that 809,000 voters</p> <p>20 might lack Texas driver's licenses and Social Security</p> <p>21 numbers. Do you see that there?</p> <p>22 A. Yeah, I do see it.</p> <p>23 Q. Do you remember coming cross that information?</p> <p>24 A. I don't remember as I sit here today. No, this</p> <p>25 was early in the process. It may have been very --</p>
<p>190</p> <p>1 as a memo to you and the other members of the committee</p> <p>2 in March of 2009?</p> <p>3 A. I don't recall it, but that appears to be what</p> <p>4 it is.</p> <p>5 Q. Okay. And it makes reference to a</p> <p>6 March 2nd hearing, but it also says --</p> <p>7 A. Organizational meeting.</p> <p>8 Q. -- Organizational Meeting. Do you remember</p> <p>9 having an organizational meeting?</p> <p>10 A. No, I don't specifically recall it, but I</p> <p>11 presume we did.</p> <p>12 Q. Now, is it your understanding that this memo</p> <p>13 from the Secretary of State is following up on some</p> <p>14 questions that were raised during the hearing on the</p> <p>15 meeting?</p> <p>16 A. It looks like that, yeah.</p> <p>17 Q. Okay. And, finally, on the last page on No. 5,</p> <p>18 where it says number voters who have registered since</p> <p>19 2006 without a driver's license number, do you see that</p> <p>20 information?</p> <p>21 A. M-hm. Yes.</p> <p>22 Q. Did you -- Did you use that information?</p> <p>23 A. Use it?</p> <p>24 Q. In the sense you were speaking earlier about</p> <p>25 estimating how many voters in Texas might lack a</p>	<p>192</p> <p>1 Let's see. These are the people who did not write down</p> <p>2 their Social Security number or their driver's license</p> <p>3 number when they registered to vote. It's not</p> <p>4 necessarily people who for sure don't have one; is that</p> <p>5 correct?</p> <p>6 Q. Well, it does say --</p> <p>7 A. These are the people that did not indicate --</p> <p>8 did not provide that information on the voter</p> <p>9 registration card which is slightly different than</p> <p>10 knowing for sure they don't have them. I think -- Is</p> <p>11 that how I read it? That's how I'm reading it.</p> <p>12 Q. Yes. I think that's a fair reading of it.</p> <p>13 It's a little more vague as to the second group.</p> <p>14 A. The question is how many of those people that</p> <p>15 for whatever reason at any time write down the driver's</p> <p>16 license or their social security number do in fact have</p> <p>17 one. I don't know.</p> <p>18 Q. So to sort of zoom out from the memo itself,</p> <p>19 would it be fair to say that at this point in the</p> <p>20 process -- this is about a month before your hearing in</p> <p>21 April -- that concerns had begun to be expressed -- and</p> <p>22 I don't need you to reveal privileged concerns, but,</p> <p>23 obviously, this is already a conversation that seems to</p> <p>24 be happening between members of the committee and</p> <p>25 Secretary of State, are concerns being expressed at this</p>



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1 time point that there might be voters who don't have ID 2 for voting? 3 A. Oh, I think not. Everybody knew there were 4 voters that didn't have a photo ID or at least a 5 driver's license. Let me put it that way. But I think 6 there was a little uncertainty. That was part of the 7 difficulty in really trying to ascertain precisely how 8 many people did not have a photo ID because it wasn't 9 just limited to driver's license. When you got to some 10 reasonable estimate of how many people didn't have a 11 driver's license, then you had to try to guess how many 12 of those people that don't have a driver's license have 13 some kind of other photo ID. 14 I will say this, that we had -- you know, 15 we never -- we couldn't find a single person who 16 testified, and we had, you know, multiple rooms full of 17 people testify, and I specifically -- let the biggest 18 committee hear rooms. We had overflow crowds in two 19 rooms, and the first thing I did was say I want to 20 prioritize any testimony from anybody who's here today 21 that does not believe they have in their possession the 22 required identification that would allow you to vote. 23 Q. And that would be under -- 24 A. And one man came forward and said he didn't 25 think he did, and he said because I don't have a	193	1 election, and so that was the only hypothetical that was 2 presented for the kind of person -- of course, that 3 person would have had trouble voting under the prior law 4 as well. So I was a little frustrated from the -- I was 5 frustrated with criticism and complaints from my right 6 and my left in this legislation and part of my 7 frustration. 8 In so far as the criticism from the left 9 was concerned was that the rhetoric that you got from 10 the partisans on the left was exactly the same, even 11 though the language in the bill was dramatically 12 different than it is with a strict photo ID bill. You 13 got the same arguments about, you know, poor -- even 14 though nobody -- that was the best -- In the committee 15 hearings we had, that was the only suggestion of who 16 would have trouble under that language was the 17 hypothetical of the homeless man with all of his 18 possession in a backpack that lost his backpack, and so 19 it was -- you know, I was a little frustrated that the 20 rhetoric didn't change when the language in my bill 21 changed. And that's just because the issue was so 22 politicized that it had very little to do with what we 23 were actually doing as a matter of policy. 24 Q. When you mentioned my bill in your last 25 sentence, you were referring to SB362 or your committee	195
1 driver's license, so I don't think I can vote in this 2 bill, and then I -- you know, I said do you have any 3 other photo ID? He pulled out his billfold. He not 4 only had the non-photo. He had another kind of photo ID 5 in his billfold. He just had the impression that you 6 had to have a driver's license to vote, and people that 7 didn't have a driver's license couldn't vote. 8 And so, you know, again, my opinion -- And 9 this is part of my frustration. There may be some -- 10 you know, some more -- I think more credible issues 11 associated with a hard photo ID bill gets to the issue 12 of how much of a burden is it on certain voters to go 13 certain distances and pay for this information, and 14 that's the kind of fact question that needs to be 15 resolved in this litigation. 16 But insofar as the legislation we were 17 considering in 2009, it was -- there just was not any -- 18 I mean, finally, I said, okay, we can't find a human 19 being that doesn't -- nobody can produce a body that 20 would not have on their possession currently the IDs 21 required to vote. Can you even give me a hypothetical 22 for who might not be able to vote in this bill, and the 23 hypothetical I was given was you could have a homeless 24 person with all their possessions in a backpack, and 25 they could lose the backpack within two weeks of the	194	1 substitute? 2 A. I was referring to the version of the bill -- 3 Well, that was true of the Senate bill as well, you 4 know. All my bill did was add two or three -- I 5 think -- I can't remember what the third one is, but 6 three additional provisions to the Senate bill, but 7 neither version would have required any voter to get a 8 document that's not already in their possession to be 9 able to vote. 10 Q. Understood and agreed. 11 A. And to me, that's pretty substantially 12 different from a bill that does. 13 Q. Such as a hard photo ID bill? 14 A. Yes. In terms of there being arguments 15 available that there is a burden created on the voter 16 that -- and we can argue about whether that burden is 17 reasonable or unreasonable, and I guess the courts are 18 the ones that answer that question. 19 Q. Yes. So just with respect to 2009 and the memo 20 from the Secretary of State, you -- putting aside the 21 question about all the non-photo ID that was available 22 in HB in SB362, would it be fair to say that questions, 23 concerns had begun to arise with respect to how many 24 voters had a driver's license that could be used for 25 voting as of March 6, 2009 when this memo comes back	196



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<p>1 from Secretary of State?</p> <p>2 A. I just think that the issue of photo ID was</p> <p>3 a -- by this time until 2009 a national issue that had</p> <p>4 been where all of the arguments available to both sides</p> <p>5 were hashed out as a matter of public record, and if you</p> <p>6 spent, you know, a few minutes or hours or weeks reading</p> <p>7 what was available on the subjects, you were going to</p> <p>8 quickly be aware of the fact that that's really what the</p> <p>9 debate was about. So I don't know that it was as -- It</p> <p>10 just was a matter of common knowledge to anyone who was</p> <p>11 familiar with the issue that those were the issues.</p> <p>12 Q. Thank you.</p> <p>13 A. M-hm.</p> <p>14 Q. And with respect to the committee and a meeting</p> <p>15 that was held between the Secretary of State and the</p> <p>16 committee, which then resulted in this memo a little</p> <p>17 less than a week later where the memo was coming back</p> <p>18 with information, would it be fair to say then that</p> <p>19 concerns were being raised within the conversations</p> <p>20 between the committee and the Secretary of State about</p> <p>21 the availability of drivers licenses to vote?</p> <p>22 A. Right. And just trying to quantify the number</p> <p>23 of participate who would actually have to go out and get</p> <p>24 an additional document if we were to require a photo ID.</p> <p>25 Again, that being less relevant in light of the fact</p>	<p>197</p> <p>1 Q. Now, if you read backwards onto Page 36, it</p> <p>2 looks like there's a conversation happening between you</p> <p>3 and Representative Brown. She makes reference -- And</p> <p>4 she makes reference to your having previously used a</p> <p>5 5 percent figure. Do you recall that?</p> <p>6 A. That may have been, you know, again, in that</p> <p>7 range of anywhere from less than 1 to 10 where I'm going</p> <p>8 in between and just pulling the number out of the sky</p> <p>9 for purposes of discussion.</p> <p>10 (Exhibit RODRIGUEZ-18 marked.)</p> <p>11 Q. Let's go ahead and mark this one. The court</p> <p>12 reporter has handed you what has been marked</p> <p>13 Rodriguez-18. I'm not going to ask you if you recognize</p> <p>14 this as a transcript of the hearing -- of the hearing on</p> <p>15 April 7th because you may not have seen a transcript of</p> <p>16 the hearing on April 7th.</p> <p>17 A. No, I have not.</p> <p>18 Q. So I'll represent to you that it's a transcript</p> <p>19 of the hearing on April 7th.</p> <p>20 A. I recall Buck Wood testifying.</p> <p>21 Q. Go ahead and look at Page 107, 108. You begin</p> <p>22 speaking at the bottom of Page 107. You say, "It is</p> <p>23 significant that this legislation, unlike some of the</p> <p>24 other pieces of legislation, does not require you to get</p> <p>25 that photo ID." Do you see that statement?</p>
<p>1 that none of the legislation in this particular session</p> <p>2 would have required that.</p> <p>3 (Exhibit RODRIGUEZ-17 marked.)</p> <p>4 Q. Thank you. I'm going to talk to you a little</p> <p>5 bit now about the hearing that was held on April 6th and</p> <p>6 April 7th. I'd like to mark this, please. This will be</p> <p>7 Rodriguez-17. And the court reporter has handed you</p> <p>8 what was marked Rodriguez-17. I wanted to say in</p> <p>9 reviewing these transcripts, I appreciated your civility</p> <p>10 and uniformed kindness to the witnesses who came to</p> <p>11 testify.</p> <p>12 A. Thank you.</p> <p>13 Q. You're welcome. I could tell that it was -- it</p> <p>14 was quite the hearing.</p> <p>15 A. Yeah, it was interesting.</p> <p>16 Q. Look with me if you would -- Is it correct to</p> <p>17 say that on Page 37 you make reference to what you</p> <p>18 believe would be a small minority of people who do not</p> <p>19 have photographic identification? It's at the beginning</p> <p>20 of your remarks on Page 37.</p> <p>21 A. Yes. What's the question?</p> <p>22 Q. Just whether you make reference to what you</p> <p>23 believe is a small minority of people who lack</p> <p>24 photographic identification.</p> <p>25 A. Right.</p>	<p>198</p> <p>1 A. M-hm.</p> <p>2 Q. And did you believe at the time that it was</p> <p>3 significant that SB362 did not require photo</p> <p>4 identification.</p> <p>5 A. Yeah. I don't -- I don't know what is being</p> <p>6 said before I make that comment, but it may very well</p> <p>7 that I was expressing my frustration over the fact that</p> <p>8 the arguments being made against it seemed to be the</p> <p>9 very same arguments that were being made against a</p> <p>10 strict photo ID requirement when they would not seem</p> <p>11 apply in this instance.</p> <p>12 Q. Did you believe that it was significant that</p> <p>13 the bill that you were having your hearing on, SB362,</p> <p>14 did not require photo ID for voting?</p> <p>15 A. It certainly is a substantially different piece</p> <p>16 of legislation in terms of the kind of questions that</p> <p>17 were involved in the litigation, yes.</p> <p>18 Q. And I think previous to that the witness may</p> <p>19 have been talking about the cost of obtaining</p> <p>20 identification, and that might be why --</p> <p>21 A. Right.</p> <p>22 Q. -- why you are drawing the distinction.</p> <p>23 A. Right.</p> <p>24 Q. Follow your comments, if you would, over to the</p> <p>25 next page. You mention again about there being a very</p>



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<p>1 small percentage of persons without photo ID.  2 A. M-hm.  3 Q. And you mentioned 1.2 percent in Indiana.  4 A. There you go. Yeah.  5 Q. And then you say the presumption is it's a  6 little higher in Texas because of the fact that we have  7 a larger minority community. Do you see that there?  8 A. Right. M-hm.  9 Q. Did you think it was valid to make the  10 percentage a little bit higher in a state like ours with  11 a larger minority community?  12 A. Sure, I do.  13 Q. I'd like you to go back to April 6, if you  14 would. That's Rodriguez <u>Exhibit 17</u>.  15 A. M-hm.  16 Q. On Page 180, 181, you are having a conversation  17 here with a witness named Justin Leavitt who came, I  18 believe, from Los Angeles to testify about voter ID, and  19 you see that you start speaking at the bottom of Page  20 180 and you say, "And you agree that by providing a  21 non-photo alternative, in addition to what other means  22 we can take, would significantly lessen any marginal  23 additional burden on some voters? You agree with that?"  24 Do you see your question there?  25 A. M-hm.</p>	201	<p>1 burdens and then the question is is there an acceptable  2 burden, an unacceptable burden because any kind of a  3 identification requirement is going to be a burden to  4 some degree. And so the question is what is acceptable.  5 (Exhibit RODRIGUEZ-19 marked.)  6 Q. Okay. That's the next volume. The court  7 reporter is handing you what's been marked Rodriguez  8 <u>Exhibit 19</u>. It is the continuation of the April 7th  9 hearing in the elections committee. There was a lot of  10 talking and the multiple volumes --  11 A. I feel like those poor politicians on Meet the  12 Press when they play their prior statements on that  13 particular show.  14 Q. I'm being gentle. Look at Page 625, if you  15 would. Now, I have in my notes that we should read from  16 625 to 627, so I think there's a back and forth going  17 on, and I wanted you to get some context. Let me see.  18 Okay. There's something going back and forth with a  19 Mr. Rodebush. Do you recall your conversation with him  20 in this hearing?  21 A. If I read it, I might. Let's see. This is  22 invited testimony or public testimony. This is the  23 second day, right. Let's see.  24 Q. This is the second day.  25 A. Yeah. That was public testimony, so this is</p>	203
<p>1 Q. Would it be correct to say that you believe  2 that providing a non-photo alternative would  3 significantly lessen any marginal additional burden on  4 some voters?  5 A. Yes.  6 Q. If you would go again to Rodriguez-18 on  7 April 7th, the other transcript. I get lost in  8 transcripts too.  9 A. What page?  10 Q. On this one it is Page 107. It's the wrong  11 citation. Hang on one second. I'll find it. There it  12 is. It's on Page 108. This is the conversation that  13 you are having with a witness named Mary Naranjo and  14 beginning at Line 11, do you see where you say, "With  15 regard to that percent, I think you are correct to the  16 extent we mandated a photo ID there would be potential  17 arguments regarding a mandated cost that might be a  18 barrier to some people at the polls"? Do you see that?  19 A. M-hm. Yes.  20 Q. And did you believe that if there was a  21 mandated photo ID requirement that it would create  22 barriers for some persons to get to the polls and vote?  23 A. I think that what I'm stating there is that  24 there are potential arguments -- Again, as I've already  25 testified, clearly all of these things are additional</p>	202	<p>1 just someone from the public.  2 Q. I think Mr. Rodebush is in favor. I'm not  3 completely sure.  4 A. Okay.  5 Q. On Page 627 -- And, in fact, on these pages, I  6 think that -- would it be fair to say that you are  7 talking to Mr. Rodebush about the possible economic  8 impact of a hard photo ID requirement?  9 A. Yes.  10 Q. All right. And where you say on Page 627,  11 "Indigents will not vote in disproportionate numbers to  12 the extent that you create economic barriers to the  13 polls," is that something that you believed when you  14 said it? You say I think they're right about that.  15 A. Sure. I think economic barriers are more  16 likely to deter poor people from voting than rich people  17 from voting.  18 Q. Okay. And did you -- Let's see. On Page 626  19 starting around Line 17, you say, "I don't know that the  20 problem here" -- I'm sorry. 626 starting at Line 17.  21 "I don't know that the problem here is a legal barrier  22 because I think the kind of thing that we're talking  23 about, and if I'm correct, has been held not to be a  24 legal poll tax, but I still believe it's a legitimate  25 issue as a matter of public policy for us to consider."</p>	204



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<p>1 Do you see that there?</p> <p>2 A. M-hm.</p> <p>3 Q. What exactly are you saying is a legitimate</p> <p>4 issue as a matter of public policy?</p> <p>5 A. The effort to do everything that we could</p> <p>6 feasibly do to minimize any economic barrier to voting.</p> <p>7 Q. And in your mind would that include providing</p> <p>8 more forms of ID in a bill that could be used for voter</p> <p>9 ID so as to minimize the economic impact?</p> <p>10 MR. FREDERICK: I want to clarify. Are</p> <p>11 you asking him just for his opinion now or for what he</p> <p>12 was thinking with regard to a specific bill?</p> <p>13 Q. We'll let him answer. I think I should ask</p> <p>14 your opinion now.</p> <p>15 A. What's the question?</p> <p>16 Q. You were talking about it's a legitimate issue</p> <p>17 as a matter of public policy to think about reducing the</p> <p>18 economic burdens of voter ID requirement, and my</p> <p>19 question to you is whether you think that providing a</p> <p>20 more expansive list of possible IDs for voting is one</p> <p>21 way to minimize the economic impact.</p> <p>22 A. I guess I presume that is the case. Obviously,</p> <p>23 I take it that there are some forms of photo ID that are</p> <p>24 more easily fraudulent than others and that there you</p> <p>25 kind of, I guess with all of the things we're talking</p>	<p>205</p> <p>1 Q. On the abstract, putting aside the legislation,</p> <p>2 is there anything about what you know about the Florida</p> <p>3 model that you liked?</p> <p>4 A. What I remember about it was the process by</p> <p>5 which the -- if I recall correctly, the people who did</p> <p>6 not have the proper identification when they voted. The</p> <p>7 process by which those votes could still count because</p> <p>8 of some sort of curative action that took place after</p> <p>9 the fact, was more inclusive, much less likely to have a</p> <p>10 legal vote not count.</p> <p>11 Q. Okay.</p> <p>12 A. I don't think it was an affidavit bypass.</p> <p>13 Q. I was guessing wrong.</p> <p>14 A. I'm trying to remember the process, but I think</p> <p>15 there was basically a committee that met and --</p> <p>16 Q. Verified the voter's signature perhaps?</p> <p>17 A. That's what it was. It was a signature match,</p> <p>18 yeah.</p> <p>19 Q. Okay. We'll get there.</p> <p>20 A. The committee deemed the signatures to be the</p> <p>21 same than the vote counted, unless the court deemed them</p> <p>22 to be different.</p> <p>23 (Exhibit RODRIGUEZ-20 marked.)</p> <p>24 Q. The court reporter has handed you what's been</p> <p>25 Rodriguez Deposition <u>Exhibit 20</u>. This is the later part</p>
<p>1 about, have to weigh the concerns of security versus the</p> <p>2 concerns of access, I guess, one another.</p> <p>3 Q. But with respect to expanding a photo ID</p> <p>4 requirement to include non-photo items, in your opinion</p> <p>5 would that be a way for using the economic impact of a</p> <p>6 voter ID requirement?</p> <p>7 A. Yes.</p> <p>8 Q. Because somebody might receive a utility bill</p> <p>9 in any event because they -- they have a utility bill.</p> <p>10 A. Yes. They already have it in their possession.</p> <p>11 They don't have to go out and get something new.</p> <p>12 Q. Okay. I got the sense from these transcripts</p> <p>13 that you spoke positively about what you understood</p> <p>14 about the Florida voter ID model. Do you remember</p> <p>15 being -- feeling positively about the Florida model?</p> <p>16 A. That's the third thing.</p> <p>17 Q. The affidavit bypass?</p> <p>18 A. Yes.</p> <p>19 Q. But I don't want to get there yet. I want to</p> <p>20 get to your substitute, but I was going to ask you</p> <p>21 simply why you liked or why you had some positive</p> <p>22 feeling about the Florida model.</p> <p>23 MR. FREDERICK: I'll object on the basis</p> <p>24 of privilege, asking about your mental impressions on</p> <p>25 pending legislation. I'll instruct you not to answer.</p>	<p>206</p> <p>1 of the first day of the hearing on April 6th, and I</p> <p>2 wanted to ask you to take a look at Page 315. I'm</p> <p>3 sorry, 351. Okay. Okay.</p> <p>4 A. Is that me?</p> <p>5 Q. That's you.</p> <p>6 A. God. I was pontificating.</p> <p>7 Q. Because it carries on.</p> <p>8 A. Where does it start?</p> <p>9 Q. It starts on 349. What I'm interested in is</p> <p>10 sort of near the end of what you were saying there.</p> <p>11 A. Okay.</p> <p>12 Q. On Line 11, you'll see that you begin a</p> <p>13 sentence on Page 351. "There's some things I hope we</p> <p>14 are going to be able to do on the House side to make it</p> <p>15 even more sensitive to these concerns." What did you</p> <p>16 mean when you made that statement?</p> <p>17 A. Those three things we're talking about.</p> <p>18 Q. Okay. So you're referring to the bill that you</p> <p>19 later introduced as your substitute?</p> <p>20 A. Right.</p> <p>21 Q. Okay. I'd like to mark that next. And this</p> <p>22 will help you because you'll be able to refer to it.</p> <p>23 A. What am I looking at?</p> <p>24 (Exhibit RODRIGUEZ-21 marked.)</p> <p>25 Q. This is -- Do you recognize this exhibit which</p>



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<p>1 has been marked Rodriguez 21 as your substitute?</p> <p>2 A. That I filed to be considered on floor after it</p> <p>3 came out of committee? Is that what it is?</p> <p>4 Q. No, because what ended up coming out of</p> <p>5 committee was 362, so I believe you circulated this in</p> <p>6 committee.</p> <p>7 A. Well, I actually filed -- In other words, we</p> <p>8 had -- I think if I recall correctly we had to prefile</p> <p>9 amendments, so I prefiled a complete substitute of the</p> <p>10 bill and this could be that.</p> <p>11 Q. I think this is something you may have passed</p> <p>12 out in committee for consideration.</p> <p>13 A. Probably. It's probably the same thing. I</p> <p>14 mean, I think --</p> <p>15 Q. It could be the same thing.</p> <p>16 A. It's basically the Senate bill with those three</p> <p>17 things, I imagine, is what it is.</p> <p>18 Q. Okay.</p> <p>19 A. That is money to have a voter registration</p> <p>20 drive, the adoption of a Florida like process by which</p> <p>21 you consider the provisional ballots, and it's a process</p> <p>22 which resulted in those ballots being more likely to</p> <p>23 count than not count, and the delay in implementation.</p> <p>24 Q. All right.</p> <p>25 A. That's what it was. I think that's -- Without</p>	209	<p>1 Q. So that's another part that makes it different?</p> <p>2 A. I didn't -- That would have been in my bill. I</p> <p>3 didn't recall whether it was in Senate Bill 14 or not.</p> <p>4 Q. Okay. 362?</p> <p>5 A. 14, the one that actually passed. That's what</p> <p>6 I thought you were comparing it to.</p> <p>7 Q. No, I was actually sticking with the 2009</p> <p>8 process.</p> <p>9 A. 362?</p> <p>10 Q. 362.</p> <p>11 A. Yeah. I think that may have been some</p> <p>12 provision by which you could show up with the correct ID</p> <p>13 after the fact. I don't know if this is the same or</p> <p>14 different. I think the Senate bill had some provision</p> <p>15 for that.</p> <p>16 Q. Okay. I have another question for you. Is</p> <p>17 there a difference between your substitute and Senate</p> <p>18 Bill 362 in 2009 with respect to how much discretion the</p> <p>19 poll worker was allowed to exercise once given the ID?</p> <p>20 Is it fair to say that your substitute said that if the</p> <p>21 poll worker simply got the ID, the poll worker had to</p> <p>22 accept it as opposed to some kind of verification</p> <p>23 whether the person looked like their picture?</p> <p>24 A. Yeah. I know we talked about that, and I think</p> <p>25 the decision was made to simply not change the language</p>	211
<p>1 reading this entire thing, I imagine that's what this</p> <p>2 is.</p> <p>3 Q. Take a look at Page 7 for me. Paragraphs D</p> <p>4 does make reference to the procedure for signature</p> <p>5 verification. So I'm hoping that you can identify this</p> <p>6 document as your substitute bill or your floor</p> <p>7 amendment.</p> <p>8 A. Yeah. It looks like it talks about the</p> <p>9 signature verification committee on Page 14.</p> <p>10 Q. I see an effective date on the last page of</p> <p>11 January 21, '13.</p> <p>12 A. Yeah, delay in implementation.</p> <p>13 Q. Are you fairly sure that this is your</p> <p>14 substitute?</p> <p>15 A. It looks like it, yeah.</p> <p>16 Q. I have another question for you.</p> <p>17 A. It could be one of various different versions</p> <p>18 of my substitute, but it does appear to be that, yes.</p> <p>19 Q. On Page 14 right above the signature</p> <p>20 verification committee, there is a new section entitled</p> <p>21 Presentation of Identification for Certain Provisional</p> <p>22 Ballots. Would it be fair to say that your substitute</p> <p>23 also provided an opportunity for the voter to return</p> <p>24 with ID following the election?</p> <p>25 A. Yes.</p>	210	<p>1 from the current language because it simply hadn't been</p> <p>2 a problem, and we were afraid if we changed the</p> <p>3 language, we might create a problem that didn't exist.</p> <p>4 In other words, there just was -- whatever</p> <p>5 language was current law seemed to be working so far as</p> <p>6 photo ID was required, and so -- or allowed, I should</p> <p>7 say, as a means of identification. So we I think the</p> <p>8 final decision was not to monkey with success, if I</p> <p>9 recall correctly.</p> <p>10 Q. Now, around the time that you rolled out your</p> <p>11 substitute, which I understand is around April 29th, is</p> <p>12 this is also the time -- and I'm going to ask if you</p> <p>13 recall this incident -- in which Representative Betty</p> <p>14 Brown made certain questions to a witness who was Asian</p> <p>15 American regarding names?</p> <p>16 A. Yeah.</p> <p>17 Q. Do you recall that incident?</p> <p>18 A. Yes, I recall that.</p> <p>19 Q. Can you describe it for me? It happened in a</p> <p>20 hearing.</p> <p>21 A. Yeah. Gosh, I mean, I think what she did in</p> <p>22 essence was ask him why he wouldn't just change his name</p> <p>23 to something easy so that he wouldn't have to worry</p> <p>24 about there being some communication problem because he</p> <p>25 had a complicated foreign name or, you know, might</p>	212



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<p>1 not -- his actual name might not match what's on the  2 voter rolls and so, yeah, I remember.  3 Q. So this is the context within which you then  4 roll out your proposal for substitute.  5 A. I don't remember. I don't -- I don't know -- I  6 don't remember if that was on the same day. I thought  7 that happened with Representative Brown when we were  8 hearing public testimony in early April.  9 Q. Did things become more heated after  10 Representative Brown made that comment and it was  11 covered in the media?  12 MR. FREDERICK: Objection. Vague.  13 A. More heated in what regard?  14 Q. Was there media coverage of Representative  15 Brown's remarks?  16 A. Yes. There was like websites where you could  17 like put in a complicated name and it would spit out a  18 real simple one like Jim Bob.  19 Q. I did not know about that.  20 A. It was like a Betty Brownometer.  21 Q. Did it seem to you at that time that there was  22 some racial tension in the reactions to those remarks?  23 A. There was an audible gasp in the room. I  24 remember that.  25 Q. Do you think that following that comment the</p>	<p>213 1 A. I'm sure. It's an unfair fight.  2 (Exhibit RODRIGUEZ-22 marked.)  3 Q. The court reporter has handed you what has been  4 marked Rodriguez Exhibit 22. Do you recognize this as  5 an April 29, 2009 article in the Quorum Report?  6 A. Again, it's one of many things that were  7 written about this issue that session. I don't  8 specifically recall it.  9 Q. Do you recall speaking to the media about some  10 of the issues --  11 A. Yes.  12 Q. -- around this time?  13 A. Yes.  14 Q. Okay.  15 A. I remember a particular incident where I went  16 to the press table and started expressing my  17 frustration.  18 Q. You do?  19 A. Yes.  20 Q. Okay. Can you tell me what you said at that  21 time?  22 A. I was -- I don't know. I have not had a chance  23 to read this document that you marked as Exhibit 22, so  24 I don't know if it pertains to this particular version,  25 but I was frustrated because it appeared that two of the</p>
<p>214 1 general context surrounding passage of voter ID became  2 more tense?  3 MR. FREDERICK: Objection. Vague.  4 A. I don't know how it could have become more  5 tense, but certainly she, by making comments like that,  6 fed the -- the -- the opposition again. I don't believe  7 insofar as the version of the legislation we were  8 considering at that time that there was really any  9 justification for that opposition, but to the extent  10 that the opposition was trying to create racial  11 undertones, she certainly aided their cause.  12 Q. Okay.  13 A. I don't think that was her intent, but it had  14 that effect.  15 Q. I need April 29th. I'm going to ask you about  16 another comment since you were really good about  17 remembering that one. In 2005 when you were on the  18 elections committee, do you recall a hearing in which  19 Representative Betty Brown was rolling out a bill to  20 require proof of citizenship for voter registration and  21 she had an exchange with Representative Anchia regarding  22 the reasons why one would need to prove citizenship at  23 the time of voter registration?  24 A. No, I don't recall that.  25 Q. Okay. It was good.</p>	<p>216 1 members on our committee were actually continually  2 changing the -- what they would need in the bill in  3 order for it to come out, and, you know, for a certain  4 period of time, I was operating under the presumption  5 that they were operating in good faith, and at some  6 point in time I stopped believing that because every  7 time I would have a bill draft that had -- would  8 incorporate what they told me they needed last time,  9 then there would be a new something else they needed.  10 So I got the impression that they were  11 actually themselves trying to frustrate my ability to  12 get a bill out of committee and begin to, you know,  13 speculate that that may have been a part of a political  14 effort to blame Straus or anybody associated with them  15 for failing to pass this bill, and so the only thing I  16 could do was to go public and let the press know that  17 that's what was happening in my committee.  18 Q. And was that before you rolled out your  19 substitute on April 29 or did that start happening  20 after?  21 A. I don't remember. I think -- I want to think  22 that all happened after. It was kind of happening as we  23 went along. I mean, it's not that there weren't  24 discussions, but, you know, again, early in the session  25 my focus was on trying to come up with language that 76</p>



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<p>1 people in the House floor would agree with and then  2 later did I begin to focus on whatever would be  3 necessary to get the bill out of committee, which were  4 two very different things in light of the make-up of the  5 committee on the one hand and the House floor on the  6 other, and so, you know, I was just willing to do  7 whatever was necessary to get the bill out of committee  8 and then my intent was to allow a vote on that version  9 and then come in with a substitute that could get the  10 marginal votes.</p> <p>11 Q. So would it be fair to say that on  12 April 29th you were already watching your right flank in  13 the committee?</p> <p>14 A. Clearly I had to get five of six votes in order  15 to get out of committee and five of those six were  16 Republicans. And so any two members working together  17 and in cooperation had the power to prevent a bill from  18 coming out of committee, if you understand the math.</p> <p>19 Q. And you mentioned those two numbers were Betty  20 Brown and was it Linda Harper Brown?</p> <p>21 A. Linda Harper Brown.</p> <p>22 Q. And this article mentions some of the things  23 that you've talked about earlier, "\$7.5 million for  24 enhanced voter registration efforts and includes a  25 mechanism for allowing voters who don't present</p>	<p>217</p> <p>1 A. Yes. I don't recall it specifically, but it  2 appears to be a Quorum Report article.</p> <p>3 Q. Okay. And it's reporting that you toughened up  4 the ID requirements in your -- the latest iteration of  5 your voter ID bill.</p> <p>6 A. Right.</p> <p>7 Q. Can you explain that to me?</p> <p>8 A. Just what we talked about earlier which is  9 doing what was necessary to get the bill out of  10 committee by having conversations with the people  11 that -- whose votes would be needed to get out of  12 committee, and it looks like I'm expressing frustration  13 that I had drafted a bill that did what I believed they  14 had asked me to include in the bill and yet it still  15 wasn't enough.</p> <p>16 Q. It reports that you put in provisions from  17 Ms. Brown's own legislation on the issue.</p> <p>18 A. Yes, I believe that's right.</p> <p>19 Q. And she continued to oppose it.</p> <p>20 A. And for some period of time until I went  21 public.</p> <p>22 Q. Okay. And it also says that this is a hard  23 photo ID requirement.</p> <p>24 A. At some point -- Let me just say this. At some  25 point after I went public, then she said -- they said we</p>
<p>218</p> <p>1 acceptable ID to have their votes subsequently counted."  2 And it talks about the signature verification committee.</p> <p>3 A. M-hm.</p> <p>4 Q. And then -- Let's see. At the bottom of the  5 page you are quoted --</p> <p>6 A. It was an eminently fair bill and Matt Engel  7 called me a Tom Delay style partisan thug.</p> <p>8 Q. He would.</p> <p>9 A. Yeah. So that's who I'm talking about. It was  10 just ridiculous how politicized it was.</p> <p>11 Q. I think he dreams about Tom Delay.</p> <p>12 A. Is that right?</p> <p>13 Q. Yeah. I don't know. He doesn't talk to me.</p> <p>14 But at the bottom of the page talks about you defending  15 your bill and quotes you saying, "The bill strikes the  16 proper balance between concerns about security and  17 concerns about voter accessibility."</p> <p>18 Is that a statement that can be fairly  19 attributed to you with respect to your substitute?</p> <p>20 A. Yes, I think so.</p> <p>21 (Exhibit RODRIGUEZ-23 marked.)</p> <p>22 Q. Okay. Okay. Let's go on to the next one. The  23 court reporter has handed you what's been marked  24 Rodriguez 23. Do you recognize this as a Quorum Report  25 article?</p>	<p>218</p> <p>1 will vote for the exact same version as came out of the  2 Senate, and then it happened within a few days, but that  3 was the -- you know, that was the first time that that  4 had been communicated to me was a few days before the  5 bill was voted out of committee, so --</p> <p>6 Q. Is it correct to say then that at this point on  7 May 6 the version of the bill that you are circulating  8 has a hard photo ID requirement?</p> <p>9 A. No, I don't think so. You know what? I don't  10 remember. It's possible. It is -- I think that is  11 right. I think -- I think, again, some of the earlier  12 discussions was I want my bill, not the Senate bill, my  13 bill, so I was trying to get her to agree to her bill  14 with the three sweeteners. That's sort of it -- We had  15 all kinds of discussions, but, anyway, it was -- what  16 they were demanding kept changing and the pressure was  17 starting to build as we got later in the session, and I  18 could see a situation where they were trying to set me  19 up as the guy who kept the bill in committee under  20 circumstances where they were actually preventing me  21 from getting it out by never giving me clarification on  22 what would be required to get the vote.</p> <p>23 Q. I see here you talk about the bill having  24 exemptions for the indigent voters over 70 who were  25 never issued a birth certificate, nursing home residents</p>



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<p>221</p> <p>1 or those with a religious objection to ID. That's in 2 that second paragraph there. 3 A. Again, I imagine that is language that's taken 4 from her prior versions of the bill. 5 Q. Yes. All right. And was that meant to 6 minimize the impact of the bill on elderly voters who 7 might lack ID? 8 A. I presume. 9 Q. And then it mentions in the third paragraph 10 that you kept the roll out period and the appropriation 11 of 7.5 million for what would now be a combination of 12 voter registration and mobile photo ID units. Do you 13 see that there? 14 A. M-hm. 15 Q. Did you include the appropriations for delayed 16 implementation and funding for voter registration in 17 order to minimize any potential negative impact or try 18 to mitigate any potential impact of voter ID? 19 MR. FREDERICK: Object on the basis of 20 legislative privilege. She's asking why you include 21 something. I would object and instruct you not to 22 answer. 23 MS. PERALES: In response to your 24 objection, I think at this point I'm going to raise or 25 suggest to you that the representative may have waived</p>	<p>223</p> <p>1 to answer that question. 2 Q. (BY MS. PERALES) Okay. Let's talk about before 3 the Betty Brown stuff. Well, there really is no before 4 the Betty Brown stuff, but going back before 5 April 29th and the day that you roll out your substitute 6 bill, I guess for lack of a better word, and you spoke 7 to the Quorum Report -- provided reports to the Quorum 8 Report and possibly others and where you talk about how 9 the bill strikes the proper balance between concerns 10 about security and concerns over voter accessibility, 11 did you make public statements at that time regarding 12 the three elements of your substitute that were new and 13 that relationship to voter accessibility? 14 A. I think earlier than this -- earlier in the 15 session there's lots of conversations with the press 16 where I'm talking about balancing the important concerns 17 regarding security on the one hand and access on the 18 other. 19 Q. Now, with respect to your substitute -- 20 A. Yes. 21 Q. So let's pick one aspect of the substitute, the 22 7.5 million for voter ed and voter registration. Did 23 you ever publicly discuss that provision as intending to 24 increase access? 25 A. Sure.</p>
<p>222</p> <p>1 his privilege on this particular issue because he spoke 2 publicly quite a bit in committee and in the press about 3 the positive aspects of those elements of his 4 substitute, the voter registration, the delayed 5 implementation, the signature verification. These are 6 things that I believe that the representative has talked 7 about enough outside of a privileged setting that he 8 would be able to answer whether the purpose of that or 9 whether his intention with that was to mitigate any 10 negative impact. 11 MR. FREDERICK: If that is the case, then 12 I would absolutely agree that a public statement would 13 not be privileged even if it's about the purpose behind 14 a specific amendment. I'm not aware of that though, and 15 so at this point because it is a specific -- I mean, if 16 the representative can specifically recall that it was a 17 public statement, then -- then, you know, I would agree 18 and I think he could answer without revealing privileged 19 information, but I am not aware that that is the case. 20 MS. PERALES: Okay. 21 MR. FREDERICK: So -- 22 MS. PERALES: I will ask him a few more 23 questions. 24 MR. FREDERICK: I think consistent with 25 his assertion of privilege, I have to instruct him not</p>	<p>224</p> <p>1 Q. And did you talk about it as also intending to 2 mitigate any potential negative effect of being required 3 to produce ID? 4 A. What we were trying to do is go out of our way 5 to completely eliminate any possible arguments to 6 that -- to that effect, and I think I succeeded to the 7 point where my right wing was unwilling to go along. 8 Q. Okay. And then also with respect to the 9 signature verification committee, which is a really good 10 idea and one that you pulled from another source from 11 Florida -- 12 A. Right. 13 Q. -- did you also discuss that publicly as in a 14 way in which somebody who might not have ID could still 15 have their legal vote counted? 16 A. Yes. Absolutely. 17 Q. And did you discuss it publicly as a way to 18 mitigate the potential and negative impact of the voter 19 ID requirement -- 20 A. Yes. 21 Q. -- and delayed implementation? Tell me about 22 your public comments with respect to delayed 23 implementation and how that might assist in mitigating 24 the potential harmful impact. 25 A. That was really more about getting the marginal</p>



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<p>225</p> <p>1 votes on the House floor and it created the major  2 backlash on the right because, you know, the Senate had  3 immediate effect. Again, a two-year delay in  4 implementation is what I would call a quasi-concession  5 because it's not even clear it was a concession at all,  6 and my intent was to publicly talk about a four-year  7 delay in implementation under the presumption that it  8 would go to a conference committee and end up at two  9 because the marginal votes were concerned that if we  10 started with two, we would just go to conference  11 committee and end up current -- it would end up -- we'd  12 end up assuming the Senate's version of immediate  13 effect.</p> <p>14 And so in order to ensure their support, I  15 agreed to go public with a -- and tried to get off the  16 floor a four-year delay in implementation and with the  17 understanding I would not ask them to support the bill  18 unless it came back from conference committee with a  19 two-year delay in implementation.</p> <p>20 But what ended up happening was we got so  21 much flack from the right for proposing a four-year  22 delay in implementation, that I went back to them and  23 said, listen, guys, this is killing me on the right,  24 please let me come off the House floor with a two-year  25 delay in implementation, and if I can't keep two in</p>	<p>227</p> <p>1 Q. Okay. Do you remember at some point during  2 this time -- it was actually right before you rolled out  3 your substitute around April 20th, 21st, meeting with  4 advocacy groups that had concerns --</p> <p>5 A. Yes.</p> <p>6 Q. -- about voter ID?</p> <p>7 A. Yes.</p> <p>8 Q. And that Advocacy, Inc., what's his name?</p> <p>9 Dustin Rynders from Advocacy, Inc., a disability rights  10 organization.</p> <p>11 A. NAACP, you guys. I remember a meeting like  12 that, yeah.</p> <p>13 Q. Do you remember talking with the folks in the  14 room about sort of efforts to try to allay some of the  15 concerns?</p> <p>16 A. Yes.</p> <p>17 Q. And do you recall Representative Anchia there  18 as well?</p> <p>19 A. I believe he was. I don't know for sure, but I  20 believe he was.</p> <p>21 Q. Do you recall saying to this group that you  22 were getting beaten up by your caucus?</p> <p>23 A. I don't recall that, but --</p> <p>24 Q. Does it -- would it -- is it possible -- Let me  25 see.</p>
<p>226</p> <p>1 conference, then I won't ask you to vote for the bill  2 and you are not committing to do so.</p> <p>3 Q. Did it work?</p> <p>4 A. It obviously didn't. I mean, we didn't get it  5 to the floor.</p> <p>6 Q. You didn't get it out of committee either, so  7 I'm trying to figure out where the not working ended up  8 happening. I mean, you are trying to get to 76.</p> <p>9 A. Yeah.</p> <p>10 Q. Did you feel like you got to 76 --</p> <p>11 A. No.</p> <p>12 Q. -- on your substitute?</p> <p>13 A. No. Because, you know, I was operating under  14 the presumption that the partisans would operate in good  15 faith, which was foolish on my part. I'm talking about  16 out on the right. And, you know, the -- they weren't  17 interested in -- they didn't want a bill. They wanted a  18 particular bill, but didn't have the votes to pass, and  19 in my opinion some people -- it was a part of a  20 political strategy to demand that you pass a bill. They  21 knew you didn't have the votes to pass, so that they  22 could blame you and the speaker for failing to do it.</p> <p>23 Q. So as you were potentially gaining votes on the  24 left, you were losing them on the right.</p> <p>25 A. Exactly. Yeah.</p>	<p>228</p> <p>1 A. I don't think it was my caucus as much as it  2 was party activists, you know, around the state that  3 were misrepresenting the realities that we faced.</p> <p>4 Q. Okay. Do you also recall mentioning to those  5 people that you were getting pressure from Speaker  6 Straus to make sure there was no blood or huge fight on  7 the floor?</p> <p>8 A. No, I don't. I don't recall saying that, and I  9 don't know that I would have.</p> <p>10 Q. Okay.</p> <p>11 A. Yeah, because I don't think -- I mean, pressure  12 from Speaker Straus would not be an accurate -- We  13 were all concerned with trying to -- you know, trying to  14 have this legislative session end up as successfully as  15 it possibly could under very difficult circumstances.</p> <p>16 Q. Do you think you discussed concerns in that  17 meeting with the possibility that when voter ID hit the  18 House floor, that there could be a big fight?</p> <p>19 A. Sure. I think we presumed there could be a big  20 fight with voter ID on the floor.</p> <p>21 Q. Do you think that you communicated to that  22 group that Speaker Straus really didn't want a big fight  23 on the floor on voter ID?</p> <p>24 A. I don't -- I don't know why I would have.  25 My -- I may have -- My sense is that there's some</p>



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<p>229</p> <p>1 something in the communication that's not completely  2 accurate that somehow what I said is not -- I don't  3 believe I said precisely that, but I may have said  4 something along those lines involving the speaker, but I  5 don't remember anything like that, and what you're  6 telling me doesn't ring true in terms of what I would  7 have likely said.</p> <p>8 Q. That's why I'm asking you about it.</p> <p>9 A. Yeah.</p> <p>10 Q. Do you recall talking with them about bringing  11 in a possible proposal by you about some deceptive  12 practices language from Anchia's bill?</p> <p>13 A. Yeah. Yeah, I do. We were very open to the  14 idea of creating additional penalties for any effort to  15 send out false information to, you know -- you know,  16 tell people the wrong election date or the wrong place  17 to vote or anything like that, that kind of voter fraud.</p> <p>18 Q. Okay. Do you think that your substitute bill  19 would have been sufficient to guarantee integrity in  20 elections with respect to voter identification?</p> <p>21 A. No.</p> <p>22 Q. Why not?</p> <p>23 A. Because guarantee is too strong a word.</p> <p>24 Q. Give me the right way to put it then.</p> <p>25 MR. FREDERICK: Objection. Vague. You</p>	<p>231</p> <p>1 little slide show presentation, I told them that every  2 Betty Brown bill prior to that legislation had allowed  3 voting with two non-photo IDs, they were just shocked  4 and appalled, and so it was a matter of great  5 misinformation. So, anyway --</p> <p>6 Q. So there's a number of concepts that are out on  7 the table. One is the level of strictness in the voter  8 ID bill that your constituents might have been calling  9 on you to propose.</p> <p>10 A. M-hm.</p> <p>11 Q. Then there's the issue of what could be passed  12 in the House given in 2009 a very close margin between  13 Democrats and Republicans.</p> <p>14 A. M-hm.</p> <p>15 Q. But I'm asking you about a third thing, which  16 is whether you had any hesitation or discomfort with  17 your substitute because you thought it might not be  18 sufficient to ensure ballot security.</p> <p>19 A. Again, nothing ensures ballot security, and  20 what I knew was that this bill would provide more  21 security than we ever had before.</p> <p>22 Q. And were you comfortable with that?</p> <p>23 A. I was -- Again, if you are asking me in  24 representing my constituents if I had to choose between  25 that version and the version we passed this session,</p>
<p>230</p> <p>1 may answer.</p> <p>2 A. It would have improved the security of the  3 polls, and it would have -- you know, in striking the  4 balance between access and security, it was certainly  5 more on the access end of the spectrum than a hard photo  6 ID requirement which is more on the security end of the  7 spectrum.</p> <p>8 Q. But did you feel comfortable that your bill  9 would in fact improve the security end of things?</p> <p>10 A. Yes, to some extent.</p> <p>11 Q. Only. Did you -- Did you have hesitation or  12 concerns that your bill wasn't doing enough to guarantee  13 security?</p> <p>14 MR. FREDERICK: Objection. Vague.</p> <p>15 A. I had concerns that it wasn't doing as much as  16 my constituents wanted it to do, but I didn't really  17 have to concern myself with the policy choice because it  18 was clear that something along the lines of what I  19 proposed was the only plausible option given the make-up  20 of the House floor. It was that or nothing. And I  21 couldn't get the grassroots to understand that or their  22 preference may have been nothing. I mean, it was just,  23 you know, portrayed very simplistically to them as the  24 weak bad bill versus the strong good bill, and that's  25 all they knew, and, you know, when I went and did my</p>	<p>232</p> <p>1 obviously, I have to choose the version we passed this  2 session.</p> <p>3 Q. But --</p> <p>4 A. In terms of, you know -- You know, I mean,  5 clearly, I believe there is certain irrational hysteria  6 on both sides of this issue that is for political  7 reasons perfectly capable of exaggerating its  8 significance. And to me, one of the primary reasons for  9 passing this legislation was just the importance of  10 getting it behind us so that we could then focus on  11 other things that were at least if not more important to  12 the state.</p> <p>13 And so I just -- You know, again, I wasn't  14 impressed with the leftist arguments about  15 disenfranchising legal voters with the bills that we  16 were talking about in my legislative session in 2009,  17 and I think there are a lot of people on the Republican  18 side that have a false impression about the frequency  19 with which this occurs.</p> <p>20 Q. I know that you mentioned earlier that you were  21 familiar with perhaps a handful of incidents in which  22 people had claimed impersonation voter fraud had  23 occurred.</p> <p>24 A. Right.</p> <p>25 Q. And you testified earlier that the problem</p>



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<p>1 could be larger and that you didn't know.</p> <p>2 A. Right.</p> <p>3 Q. Right. And I also don't -- I mean, there's</p> <p>4 many things that we don't know.</p> <p>5 A. No.</p> <p>6 Q. Given what you knew -- Because here you are, a</p> <p>7 policymaker. You are on top of this issue now. You've</p> <p>8 researched it. You've looked at other states. You know</p> <p>9 what the Attorney General's Office and Secretary of</p> <p>10 State have offered in terms of information about voter</p> <p>11 fraud and how prevalent or not prevalent it is.</p> <p>12 A. M-hm.</p> <p>13 Q. Putting aside the question of what you've</p> <p>14 very -- what you've explained very well as public</p> <p>15 perception with, respect to the policy of balancing</p> <p>16 security and access to the ballot, were you comfortable</p> <p>17 with your bill that it struck the right balance between</p> <p>18 access and security?</p> <p>19 A. I want as much security as you can possibly get</p> <p>20 that doesn't create an unreasonable burden on legal</p> <p>21 voters. And so my preference would be the hard voter ID</p> <p>22 bill unless there's credible evidence that it creates</p> <p>23 unreasonable burden on legal voters because it provides</p> <p>24 additional security.</p> <p>25 Q. Did you have specific concerns with respect to</p>	<p>1 wouldn't get the votes in the House.</p> <p>2 Q. And you think --</p> <p>3 A. I think they would be sensitive to that.</p> <p>4 That's my guess on how that would have proceeded in that</p> <p>5 unlikely scenario.</p> <p>6 Q. Okay. Well, it might have happened if you had</p> <p>7 gotten it out of committee, maybe.</p> <p>8 A. Well, you know, no -- In other words, when</p> <p>9 the -- when the party leaders and activists started</p> <p>10 characterizing my bill as bad and weak, then I don't</p> <p>11 think you could have gotten the members to vote for it</p> <p>12 because they just -- because of the perception that was</p> <p>13 being created back home.</p> <p>14 Q. So were Betty Brown and Linda Harper-Brown</p> <p>15 responding to the party activists or was it the other</p> <p>16 way around?</p> <p>17 A. I really don't know. I honestly don't know who</p> <p>18 they were talking to, but they were talking to somebody.</p> <p>19 It was kind of a game plan that I wasn't privy to.</p> <p>20 Q. Okay. Do you recall in either 2009 or 2011</p> <p>21 Lieutenant Governor Dewhurst talking about noncitizen</p> <p>22 voting as a form of voter fraud?</p> <p>23 A. No.</p> <p>24 Q. Do you recall in either 2009 or 2011 anybody</p> <p>25 within Power Texas talking about noncitizen voting as</p>
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	<p>1 your substitute that it would not provide enough</p> <p>2 security?</p> <p>3 A. Again, when you say "enough security," I</p> <p>4 want -- it's like, you know, enough fun, enough --</p> <p>5 Q. Enough money?</p> <p>6 A. Enough money. You want as much as you can get</p> <p>7 that doesn't have any adverse effect, and so more is</p> <p>8 better unless it creates an unreasonable burden on legal</p> <p>9 voters.</p> <p>10 Q. If your substitute had made it out of committee</p> <p>11 and passed the House, what would have happened in</p> <p>12 conference in 2009?</p> <p>13 MR. FREDERICK: Objection. Calls for</p> <p>14 speculation. You can answer.</p> <p>15 A. Say that one more time. I was just imagining</p> <p>16 myself governor, so I lost my train of thought.</p> <p>17 Q. If your substitute -- You got that happy look</p> <p>18 on your face. If your substitute had passed the House,</p> <p>19 passed committee, passed the House, what would have</p> <p>20 happened to it in conference committee?</p> <p>21 MR. FREDERICK: Same objection. You can</p> <p>22 answer.</p> <p>23 A. I think that it would have stayed exactly the</p> <p>24 way I proposed it because I would have made it very</p> <p>25 clear to the senators that if they changed anything, I</p> <p>1 voter fraud?</p> <p>2 A. No.</p> <p>3 (Exhibit RODRIGUEZ-24 marked.)</p> <p>4 MS. PERALES: Okay. This is Rodriguez 24.</p> <p>5 It keeps getting worse, doesn't it?</p> <p>6 MR. FREDERICK: I'm sorry. Was that</p> <p>7 Rodriguez 23 or 24?</p> <p>8 Q. 24. It's 24. Do you recognize Rodriguez</p> <p>9 Exhibit 24 as an article from the Quorum Report?</p> <p>10 A. Yes.</p> <p>11 Q. And help me understand who is SREC?</p> <p>12 A. State Republican Executive Committee.</p> <p>13 Q. Okay. And is this article correctly saying</p> <p>14 that there was an email blast from the State Republican</p> <p>15 Executive Committee accusing you of deliberately</p> <p>16 sabotaging the voter ID bill?</p> <p>17 A. I don't remember that. I don't believe that's</p> <p>18 true. Where do you see that?</p> <p>19 Q. It's just the first line of the article.</p> <p>20 A. Email blast? No just certain members. Not the</p> <p>21 committee itself.</p> <p>22 Q. Certain members?</p> <p>23 A. Yeah. Couple of members it looks like did</p> <p>24 that. I don't remember it, but --</p> <p>25 Q. So a couple of members of the State Republican</p>



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<p>237</p> <p>1 Executive Committee?</p> <p>2 A. M-hm. Yes.</p> <p>3 Q. Do you see down below where it says the SREC</p> <p>4 email?</p> <p>5 A. M-hm. Yes.</p> <p>6 Q. Do you recall ever seeing this email?</p> <p>7 A. I don't recall this specific email, but</p> <p>8 certainly the arguments in it are familiar.</p> <p>9 Q. Do you ever recall reading that somebody wrote</p> <p>10 The chief ally of the Democrats and the Delay game was</p> <p>11 and is Todd Smith?</p> <p>12 A. Where is that? I don't see that.</p> <p>13 Q. It's there on the second page. It's in the</p> <p>14 paragraph above the paragraph with the underlining in</p> <p>15 it.</p> <p>16 MR. FREDERICK: The first --</p> <p>17 A. I don't know who's writing that. Who is that?</p> <p>18 What's the question?</p> <p>19 Q. If you ever recall reading an email where it</p> <p>20 says you were an ally with the Democrats to delay the</p> <p>21 bill and kill it.</p> <p>22 A. Effectively what my political opponent was</p> <p>23 arguing, and then when I -- you know, anybody that was</p> <p>24 within a hundred miles of the voter ID issue that</p> <p>25 session was accused by their political opponent of being</p>	<p>239</p> <p>1 to '11 period, and you said you couldn't remember, and I</p> <p>2 was wondering if by looking at this it would have</p> <p>3 refreshed your recollection at all.</p> <p>4 A. I wouldn't have seen this, so it wouldn't be</p> <p>5 refreshing my recollection. I have not seen Exhibit 88.</p> <p>6 It seems to be evidence that he at least wrote one</p> <p>7 constituent and made some concern like that.</p> <p>8 Q. It doesn't jog your memory as to any speeches</p> <p>9 or mail or anything you got from the lieutenant</p> <p>10 governor?</p> <p>11 A. No.</p> <p>12 Q. Do you know whether the SB14 bill language came</p> <p>13 from the lieutenant governor?</p> <p>14 A. No.</p> <p>15 Q. Okay. Now in 2011, you were not on the</p> <p>16 elections committee, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Which in hindsight might have been a blessing.</p> <p>19 A. It's always a blessing.</p> <p>20 Q. In 2011, can you name some of the controversial</p> <p>21 legislative issues during the session besides voter ID?</p> <p>22 A. The budget was 90 percent of the controversy</p> <p>23 that session, I think. I was on public ed, so the</p> <p>24 reforms and reduction in regulation and additional</p> <p>25 flexibility of two school districts was very</p>
<p>238</p> <p>1 the one who killed it. It was Straus. It was me. It</p> <p>2 was Betty Brown. It was anybody within a hundred miles</p> <p>3 of it. If you were running against somebody within a</p> <p>4 hundred miles, you said they killed it.</p> <p>5 Q. Down below that is some text that's titled</p> <p>6 "Todd Smith's Reply." Can you read that and tell me if</p> <p>7 you wrote it?</p> <p>8 A. I don't recall having written, but it certainly</p> <p>9 looks like something that I could have and probably did</p> <p>10 write.</p> <p>11 Q. Okay. If I had been mad, I probably would have</p> <p>12 written something a lot worse.</p> <p>13 A. If you what now?</p> <p>14 Q. If I had been mad, I probably would have</p> <p>15 written something a lot worse.</p> <p>16 A. That would be my voice mail.</p> <p>17 Q. Okay.</p> <p>18 A. Yeah. I think this is all very accurate in</p> <p>19 terms of what it says I wrote here.</p> <p>20 Q. And that's with respect to Rodriguez 24?</p> <p>21 A. Yes.</p> <p>22 Q. The court reporter has handed you what has been</p> <p>23 marked US-88, and I had asked you a question earlier</p> <p>24 about whether you recall the lieutenant governor talking</p> <p>25 about noncitizen voting as voting fraud during the '09</p>	<p>240</p> <p>1 controversial, reducing or eliminating or changing what</p> <p>2 I think we eventually did class size, et cetera, making</p> <p>3 it easy to fire bad teachers and so several things. I</p> <p>4 can't remember. I mean --</p> <p>5 Q. How about redistricting?</p> <p>6 A. Oh, yeah, that one. Yeah.</p> <p>7 Q. And what about immigration and what was called</p> <p>8 the Sanctuary Cities bill?</p> <p>9 A. Yeah. Airport screening, you know, was our big</p> <p>10 issue. We spent more time on that, I think, than</p> <p>11 anything else. Redistricting, again, to me it's not as</p> <p>12 controversial inside the House among the members as it</p> <p>13 is in the press. I mean, if your ox is getting gored</p> <p>14 then it's a pretty big deal, but people vote their party</p> <p>15 and it's done.</p> <p>16 Q. You are from up there by Euless, right?</p> <p>17 A. Yeah.</p> <p>18 Q. That may also be why.</p> <p>19 A. Why?</p> <p>20 Q. Because it's big suburban area, big suburban</p> <p>21 geography up there.</p> <p>22 A. Our districts don't have to change dramatically</p> <p>23 because we grow about the same rate as the population.</p> <p>24 Q. Or faster.</p> <p>25 A. Faster. That's right.</p>



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<p>241</p> <p>1 Q. So with respect to what was called the 2 Sanctuary Cities bill, would you say that was pretty 3 controversial in the 2011 session? 4 A. I mean, I think -- You know, my sense is that's 5 one of the bills that all the Republicans and some of 6 the Democrats would support. 7 Q. But do you remember whether it was 8 controversial? 9 A. Yeah, it's controversial. It's got people who 10 disagree with it. 11 Q. Do you remember it going to a special session? 12 A. Sure. 13 Q. All right. Was that because it died during the 14 regular session and was put back on the call for the 15 special by the governor? 16 A. Yes. 17 Q. You had talked with Ms. Westfall about a voter 18 ID bill that you had introduced in the 2011 session that 19 you characterized as a stricter bill. 20 A. M-hm. Yes. 21 Q. And is it fair to say that you included student 22 ID as one of the forms of photographic identification in 23 your stricter bill? 24 A. I don't know. 25 Q. Okay.</p>	<p>1 and a concession that it occurs to some extent, then it 2 really at that point becomes academic in trying to 3 quantify the extent to which it occurs. It really 4 doesn't matter at that point because we have close 5 elections, and so if it occurs even infrequently and 6 your constituents want you to do it, then there's a 7 reason to do it. 8 Q. Do you have any information showing that any 9 particular incident of impersonation fraud ever happened 10 with respect to more than one voter in a particular 11 election? 12 A. I don't -- I just don't -- I can't cite you to 13 any that I can -- I mean, I think the one I talked about 14 in south Texas involved more than one voter, but I do 15 not know whether that ultimately was determined to have 16 been multiple instances of in-person voter fraud or not. 17 I think there were allegations of that. I don't know 18 whether those allegations were proven to be correct. 19 Q. Was that also a mix of allegations related to 20 mail ballots? 21 A. No. I think that involved in-person fraud 22 because we were certainly honing in on that type of 23 voter fraud. 24 Q. Was that City of McAllen or Progresso; do you 25 recall?</p>
<p>242</p> <p>1 A. I presume if you say I did, I did. 2 Q. All right. And if it was in your stricter 3 bill, is that because you believe that a student ID 4 proves somebody's ID? 5 MR. FREDERICK: Object on the basis of 6 legislative privilege and instruct you not to answer. 7 Nina, when you get to a stopping point, 8 can we take a short break? 9 MS. PERALES: Yes, let's take a short 10 break right now because I'm sort of coming to the end. 11 (Recess from 4:33 p.m. to 4:40 p.m.) 12 Q. (BY MS. PERALES) Based on your previous 13 testimony with Ms. Westfall on incidents of voter fraud, 14 would it be correct to say that you cannot specifically 15 remember an incident of impersonation voter fraud other 16 than the one that you mentioned earlier that you talked 17 about happening recently in Tarrant County? 18 A. In terms of knowing the specifics and the 19 details of any other event, as I sit here today, I would 20 say, yes. Obviously, I think the opposition to the 21 legislation's characterization of those incidents as 22 being infrequent or uncommon or language like that is a 23 concession on their part that it does occur to some 24 extent, and when you consider the political desire on 25 the part of people I represent to have the legislation</p>	<p>244</p> <p>1 A. Progresso sounds right. 2 Q. And it's your recollection that with respect to 3 Progresso, there was more than one allegation of 4 impersonation voter fraud? 5 A. I thought there was. Yeah, my sense was that 6 it was sort of a -- again, I'm working off of 7 recollection here, but there was allegations of, you 8 know, people doing it in an organized manner and not 9 just one person going out and doing something wild and 10 crazy and completely independently. 11 Q. Do you know if Progresso is a big city or a 12 little city? 13 A. I presume it's a little city. 14 Q. Aside from Progresso can you think of any other 15 information that you ever learned of a voter 16 impersonation incident in a particular election that 17 involved more than one person? 18 A. I bet if you read the John Fund book, you'll 19 get some evidence of that. 20 Q. Did you read the John Fund book in 2009? 21 A. I don't remember. I may have read portions of 22 it. I may have read the whole thing. I don't remember. 23 Q. Wasn't the John Fund book about a different 24 state than Texas? 25 A. I this it's about the nation. It's about voter</p>



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<p>245</p> <p>1 fraud nationwide and about voter ID. I think there's 2 some mention of Texas in that book.</p> <p>3 Q. Do you recall whether he presented any specific 4 examples of impersonation voter fraud happening more 5 than one time in a particular election?</p> <p>6 A. I think he did. I could be wrong, but I think 7 he did. Certainly in other -- you know, if not in 8 Texas, in other states.</p> <p>9 Q. Okay. I wanted to ask you a couple of 10 questions about the bill that you were looking at 11 earlier that you introduced in 2011 requiring 12 documentary proof of citizenship for voter registration. 13 Do you remember that?</p> <p>14 A. Yes.</p> <p>15 Q. Did you ever introduce a bill requiring 16 documentary proof of mental capacity for people who are 17 registering to vote?</p> <p>18 A. I don't recall doing that.</p> <p>19 Q. Did you ever introduce a bill requiring 20 documentary proof of age for persons registering to 21 vote?</p> <p>22 A. No.</p> <p>23 Q. Did you ever introduce a bill requiring 24 documentary proof of residence for persons applying to 25 register to vote?</p>	<p>247</p> <p>1 of impersonation voter fraud in Tarrant County with 2 respect to a precinct chairman. Do you recall that?</p> <p>3 A. Yes.</p> <p>4 Q. That's pretty close to home for you, right?</p> <p>5 A. Yes.</p> <p>6 Q. Did you read it in the local papers?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall that the chairman had arranged 9 for her son to vote impersonating her husband?</p> <p>10 A. I think that's right.</p> <p>11 Q. Do you know whether the son used a voter 12 registration certificate or whether he used ID where he 13 may have had the same name as his dad?</p> <p>14 A. I don't know.</p> <p>15 Q. I'll have a junior. I'll share with you, so my 16 husband and my son have the same name, and I suppose one 17 could go in with the other one's ID.</p> <p>18 A. Don't do it.</p> <p>19 Q. Don't, no. So it's possible, isn't it, that if 20 the son had used the ID -- his own ID and he had the 21 same name as his dad, that that kind of voter 22 impersonation would not be fixed by SB14?</p> <p>23 MR. FREDERICK: Objection. Calls for 24 speculation. You may answer.</p> <p>25 A. Say that one more time.</p>
<p>246</p> <p>1 A. I don't believe so.</p> <p>2 Q. Would it be fair to say then that with respect 3 to bills that you've introduced regarding eligibility 4 requirements for voter registration, that the only bills 5 you've ever introduced had to do with documentary proof 6 of citizenship?</p> <p>7 A. Probably.</p> <p>8 Q. Why only citizenship? You said earlier people 9 can lie. They can lie about their age, their sanity, 10 their residence, their citizenship. Why did your bill 11 only focus on citizenship?</p> <p>12 MR. FREDERICK: Objection. Calls for 13 legislative privilege. Instruct you not to answer.</p> <p>14 Q. I'll go at it another way. Would it be fair to 15 say that with respect to communications from your 16 constituents that the overriding concern with respect to 17 voter eligibility was on US citizenship?</p> <p>18 A. Probably.</p> <p>19 Q. And you were responding to your constituent 20 concerns when you introduced the bill on documentary 21 proof of citizenship.</p> <p>22 MR. FREDERICK: Object based on 23 legislative privilege. Why you acted is privileged. 24 I'll instruct you not to answer.</p> <p>25 Q. You mentioned earlier today about an incident</p>	<p>248</p> <p>1 Q. It's possible, isn't it, that if in that 2 instance of impersonation voter fraud if the son had 3 been using his driver's license to vote under his dad's 4 name, they were the same name, that that fraud would not 5 have been prevented by SB14?</p> <p>6 A. It seems to me that's the kind of fraud that 7 would be prevented by SB14 because presumably he looks 8 different than his dad.</p> <p>9 Q. Oh, but if his name matched his dad's name on 10 the rolls and he had an ID showing him with his dad's 11 name, then SB14 would not have been able to prevent that 12 fraud.</p> <p>13 A. I guess not, yeah.</p> <p>14 Q. But, in fact, in Tarrant County, the fraud was 15 identified, wasn't it, because dad showed up later in 16 the day to vote in the very same precinct.</p> <p>17 A. Right.</p> <p>18 Q. So because you sign in to vote, they were able 19 to tell under the current system that someone had 20 already voted under his name.</p> <p>21 A. Right.</p> <p>22 Q. So SB14 in a sense is superfluous because the 23 voter fraud was detected.</p> <p>24 MR. FREDERICK: Objection. Assumes facts 25 not in evidence. Calls for speculation.</p>



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<p>249</p> <p>1 A. In that instance perhaps.</p> <p>2 Q. Okay. Would you also agree that if Ms. James, 3 that was her name, had used -- had actually used that 4 voter certificate, that she would have had access to her 5 husband's voter certificate by virtue of being in the 6 same household as him?</p> <p>7 MR. FREDERICK: Objection. Calls for 8 speculation. You may answer.</p> <p>9 A. Say it one more time.</p> <p>10 Q. Ms. James, the lady precinct chairwoman, by 11 virtue of living with her husband would have had access 12 to his voter certificate because they shared the same 13 home, that, otherwise, in order to secure somebody's 14 voter certificate, you are either going to have to steal 15 it from them or buy it from them or in some way get 16 ahold of it from somebody.</p> <p>17 A. Sometimes they're mailed to you because it went 18 to a prior tenant who used to live there that you now 19 know is in New York.</p> <p>20 Q. So if you accidentally ended up with somebody 21 else's voter certificate though, that would certainly 22 not be because you were sort of some conspiracy to cast 23 an illegal vote.</p> <p>24 A. No.</p> <p>25 Q. You had talked earlier in your deposition about</p>	<p>251</p> <p>1 might not have a Texas driver's license?</p> <p>2 A. Certainly --</p> <p>3 MR. FREDERICK: Objection. Vague.</p> <p>4 A. -- would be among that group of people.</p> <p>5 MS. PERALES: Can I have a one-minute 6 break? I think I'm done.</p> <p>7 (Recess from 4:51 p.m. to 4:54 p.m.)</p> <p>8 MS. PERALES: I reserve the remainder of 9 my questions and save the remainder for trial and pass 10 the witness to Mr. Frederick.</p> <p>11 MR. FREDERICK: I reserve my questions for 12 the time of trial.</p> <p>13 (Deposition concluded at 4:54 p.m.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>250</p> <p>1 the fact that there's probably some very small number of 2 people who lack photo ID and that you basically 3 presented that proposition, and I was curious --</p> <p>4 A. Who lacked a driver's license. I don't know 5 that we ever really were able to determine who didn't 6 have -- how many people of the 5 or 6 percent, whatever, 7 2 percent, whatever it is, that don't have a driver's 8 license, what proportion of those have some other form 9 of photo ID that would be acceptable on these list.</p> <p>10 Q. So with respect to these people, did you ever 11 in your mind come to an idea of who they might be, what 12 their personal circumstances might be?</p> <p>13 A. People who don't drive.</p> <p>14 Q. And who are the people who don't drive?</p> <p>15 MR. FREDERICK: Objection. Vague.</p> <p>16 Objection. Calls for speculation. You may answer.</p> <p>17 A. Yeah. I don't know, but I presume very poor 18 would be prominent among the list of people who use 19 public transportation. Perhaps the very elderly, 20 although -- Don't they have a Social Security or 21 Medicaid Medicare photo ID? You don't get a photo ID? 22 I thought senior citizens had something, but -- So those 23 are the ones I can think of, the elderly that don't 24 drive and poor.</p> <p>25 Q. How about out-of-state college students who</p>	<p>252</p> <p>CHANGES AND SIGNATURE</p> <p>RE: STATE OF TEXAS VS. TEXAS STATE CONFERENCE OF NAACP BRANCHES, et al</p> <p>PAGE LINE CHANGE REASON</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 I, TODD SMITH, have read the foregoing deposition 12 and hereby affix my signature that same is true and 13 correct, except as noted above.</p> <p>14</p> <p>15 TODD SMITH, Witness 16 THE STATE OF _____ ) 17 COUNTY OF _____ ) 18 Before me, _____, on this day 19 personally appeared TODD SMITH, known to me (or proved to me under oath or through _____) 20 (description of identity card or other document) to be 21 the person whose name is subscribed to the foregoing 22 instrument and acknowledged to me that they executed the 23 same for the purposes and consideration therein 24 expressed. 25 Given under my hand and seal of office this _____ day of _____, _____. Notary Public in and for the State of _____.</p>



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